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March 3, 2017

VIA EMAIL AND HAND DELIVERY

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
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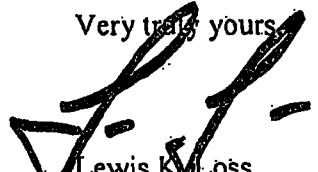
Re: **MUR 6869R & 6942R**

Dear Sir/Madam:

Enclosed is the joint response of individual respondents, Howard G. Buffet, John C. Danforth, John Griffen, Antonia Hernandez, John I. Jenkins, Newton N. Minow, Richard D. Parsons, Dorothy S. Ridings, Alan K. Simpson, and Janet Brown, to the complaints filed in the above-referenced matters under review. These individual respondents also incorporate and adopt all previous filings by respondents Commission on Presidential Debates, Frank Fahrenkopf, Jr., and Michael D. McCurry, who, in turn, also adopt and incorporate this joint response.

Please do not hesitate to contact us if you have any questions or need any additional information.

Very truly yours,


Lewis K. Loss
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Enclosures

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March 3, 2017

VIA EMAIL AND HAND DELIVERY

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6869R & 6942R

Dear Sir/Madam:

We serve as counsel for the Commission on Presidential Debates (the "CPD") and each of the individual respondents in connection with MURs 6869R and 6942R. This matter was recently remanded to the Federal Election Commission ("FEC") by the district court in the matter captioned *Level the Playing Field v. Federal Election Commission*, No. 1:15-cv-01397-TSC, 2017 WL 437400 (D.D.C. Feb. 1, 2017) ("Opinion" or "Op.").

In earlier submissions in these matters, respondents reviewed CPD's origins, leadership, independence, and historical and current approach to the challenge of candidate selection. Those submissions demonstrated that CPD is a proper staging organization and that its candidate selection criteria are "pre-established and objective." This submission does not repeat all of the information and discussion provided in those prior submissions, which are incorporated by reference. Rather, in this submission, we primarily address issues that the district court highlighted in its Opinion and provide an update to respondents' prior submissions to address subsequent events.¹

¹ Respondents CPD, Frank J. Fahrenkopf, Jr., and Michael D. McCurry were served with the complaints and supplements to the complaints when they were initially filed and responded to those filings in submissions dated December 15, 2014 ("CPD 12/14 Resp."), and May 26, 2015 ("CPD 5/15 Response") (collectively, "CPD's Prior Responses"). The remaining respondents (CPD Directors Howard G. Buffett, John C. Danforth, John Griffen, Antonia Hernandez, John I. Jenkins, Newton N. Minow, Richard D. Parsons, and Dorothy Ridings, former CPD

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I. CPD DOES NOT ENDORSE, SUPPORT OR OPPOSE CANDIDATES OR POLITICAL PARTIES.

FEC regulations require debate staging organizations to be tax exempt organizations (under 26 U.S.C. 501(c)(3) or (4)), "which do not endorse, support, or oppose political candidates or political parties" 11 C.F.R. § 110.13(a)(1). The district court directed the FEC "to articulate its analysis in determining whether CPD endorses, supports or opposes political parties or candidates." (Op. at *14). When the facts are considered and the FEC's regulation is properly applied, it is clear that the FEC was correct in earlier determining that CPD does not endorse, support or oppose candidates or political parties.

We do not understand complainants or the district court to suggest that the mere fact that a debate sponsor invites some candidates and does not invite others constitutes endorsing, supporting or opposing a candidate under FEC regulations. Plainly, in elections in which there are many candidates, not all candidates can be invited, and the FEC's regulations expressly provide rules governing how staging organizations are to go about making candidate selection decisions, not whether such decisions can be made. See 11 C.F.R. § 110.13(c) (entitled "Criteria for Candidate Selection"). Moreover, since the legality of a staging organization's selection criteria is a separate inquiry, the question whether a staging organization supports, endorses or opposes candidates or political parties should turn on actions by the organization apart from its criteria and candidate selection.

When addressing the meaning of the terms "supports, endorses, or opposes political candidates or political parties," the district court turned to dictionary definitions, suggesting a "plain meaning" test. (Op. at *12, n. 6 ("According to the Oxford Dictionary, 'endorse' means 'to declare one's approval of'; 'support' means 'contributing to the success of or maintain the value of'; and 'oppose' means to set oneself against' or stand in the way of.'")).

Under the court's "plain meaning" approach, complainants offer no evidence whatsoever that CPD, *as an organization*, "endorses, supports or opposes" candidates or political parties. Many organizations run ads or issue endorsements in support of or in opposition to candidates. CPD does none of those things, and complainants do not contend otherwise. Complainants also offer no evidence of other actions by CPD *as an organization* that could constitute such endorsing, supporting, or opposing. Simply stated, insofar as CPD indisputably is tax exempt under 26 U.S.C. 501(c)(3), the absence of any such evidence should end the inquiry into whether CPD is a proper staging organization.

But complainants try another path. They seek to shift the inquiry to whether CPD is a "nonpartisan" organization. (Compl. at 10 ("First, debate staging organizations must be nonpartisan.")). Complainants attempt this misdirection in an effort to make relevant cherry-picked statements by individual directors from thirty years ago, false accounts of events that occurred in 1992 (over twenty-five years ago), and protected First Amendment activities by directors *in their individual capacities*.

Director Alan K. Simpson, and CPD Executive Director Janet H. Brown) were first served with the complainants' filings on remand and submit this response to those filings. All respondents adopt all responses.

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This strained effort fails for at least two reasons. First, there is simply no basis in the FEC's regulations to substitute complainants' vague inquiry into "nonpartisanship" for a straightforward examination of whether a debate staging organization endorses, supports or opposes candidates or political parties. As noted, FEC regulations require debate staging organizations to be tax exempt organizations (under 26 U.S.C. 501(c)(3) or (4)), "which do not endorse, support, or oppose political candidates or political parties" 11 C.F.R. § 110.13(a)(1). There is no basis for a separate inquiry into the vague concept of "nonpartisanship."

Second, complainants offer a false narrative about CPD *even if* the evidence on which they rely were relevant, as demonstrated below.

A. Statements Made at the Time CPD Was Formed and Other Miscellaneous Statements.

Complainants cite statements made by CPD's co-founders, Frank Fahrenkopf and Paul Kirk in 1987, at the time CPD was formed, in an effort to support their general thesis that CPD is bipartisan, not nonpartisan. (Compl. at 19). CPD addressed these and related allegations in its Prior Submissions. (*See, e.g.*, CPD 12/14 Resp. at 5; Declaration of Janet H. Brown ("Brown Decl.") submitted therewith at ¶¶ 15-18, 37). Those materials describe in detail the voter education purposes for which CPD was formed and the independent manner in which CPD has conducted its operations. The FEC has expressly considered and rejected similar allegations. (*See, e.g.*, CPD 12/14 Resp. at 5 (quoting MUR 5414, First Gen. Counsel's Report at 6)). Notably, the FEC considered these allegations in MUR 5414 and stated: "[n]ot only did challenges based on Fahrenkopf's and Kirk's leadership not carry the day when they were fresh, but as neither man has been a party official since 1989, the passage of time has rendered such assertions less persuasive." (Id.)

While statements made thirty years ago at the time of CPD's founding should not be relevant to an inquiry into whether CPD endorses, supports or opposes candidates or political parties, with this submission, respondents submit two new sworn declarations that further address CPD's origins. The first is from CPD co-founder and Co-Chair Frank J. Fahrenkopf, attached hereto as Exhibit 1. In his declaration, Mr. Fahrenkopf states:

6. Complainants have cited various statements from around the time the CPD was formed to urge that CPD is partisan in its operations and adverse to independent or third party candidates participating in the debates CPD sponsors. This is not correct.

7. CPD was organized in response to the recommendations of two separate studies on presidential elections and debates: (1) the April 1986 Final Report of the Commission on National Elections, entitled Electing the President: A Program for Reform, a nine-month study of presidential elections by a distinguished group of news executives, elected officials, business people, political consultants, and lawyers conducted under the auspices of the Georgetown University Center for Strategic and International Studies, and (2) the

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Theodore H. White Conference on Presidential Debates held in March 1986 at the Harvard Institute of Politics and chaired by Newton Minow, former chairman of the Federal Communications Commission. (President Barack Obama recently awarded Mr. Minow the Presidential Medal of Freedom, the nation's highest civilian award).

8. Both of those studies underscored the importance presidential debates had assumed in American electoral politics. Rather than permit the existence of debates to turn on the vagaries of each election, the studies recommended that the debates be "institutionalized." More specifically, both studies recommended that the two major political parties create a mechanism designed to ensure, to the greatest extent possible, that debates become a permanent and integral part of the presidential election process.

9. At that time, Paul G. Kirk, Jr., and I served as chairmen of the Democratic National Committee ("DNC") and Republican National Committee ("RNC") respectively, and we responded, in 1987, by initiating CPD as a not-for-profit corporation separate and apart from either party organization. The CPD is and always has been governed by an independent Board comprised of distinguished Americans. CPD receives no party or governmental funding. Paul Kirk's term as party chairman expired in 1989, as did mine. For over 28 years now, no Board member has held a position with either of the major parties. Simply stated: The CPD operates completely independently of the major parties.

(Declaration of Frank J. Fahrenkopf ("Fahrenkopf Decl.") ¶¶ 6-9). Mr. Fahrenkopf then puts the cherry-picked quotes on which complainants rely in proper context as follows:

10. When the CPD was formed, the goal was to institutionalize general election televised debates for the good of the public, and the major impediment to achieving that goal was securing the commitment of both major party nominees to debate. References to the CPD as bipartisan at the time of its formation must be understood with reference to this challenge and the huge stride forward that forming CPD represented.

11. Very shortly after we formed CPD, we realized that our educational mission would be incomplete unless we identified a mechanism for identifying any non-major party candidate who properly should be considered a leading candidate and, therefore, invited to participate in debates sponsored by CPD. Thus, before CPD sponsored its first debate and ever since, it has extended debate invitations pursuant to written, publicly announced nonpartisan candidate selection criteria designed to identify the leading candidates, regardless of party affiliation or lack thereof.

(*Id.* ¶¶ 10-11). As the FEC is aware, it has repeatedly found those criteria to comply with FEC regulations.

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The second sworn declaration addressing CPD's founding is from former League of Women Voters president and current Co-Chair of CPD, Dorothy S. Ridings, attached hereto as Exhibit 2. Ms. Ridings states:

21. In closing, I was not involved in the design or creation of the CPD. Frankly, I viewed the CPD skeptically when it was formed. I understood that its initial design, with the then-major party chairs serving as the CPD's co-chairs, was intended to help ensure major party candidate participation and thereby institutionalize the debates. This was a laudable goal. However, I was concerned that CPD would not be sufficiently independent of the major parties, and I also was uncertain whether CPD would properly address the issue of non-major party candidate participation in the debates it would sponsor. CPD's actual performance has wholly allayed my concerns.

22. I have been enormously pleased over the last thirty years as the CPD has operated independently of any political party or campaign. Since 1989, no party official has served on the CPD Board and it receives no party or governmental funds. While many Board members can be identified as having participated in our nation's public life in various ways through one or another of the major parties, that is true of most civic leaders in our nation. There are and have been over the years Board members whose political affiliation I simply do not know and they may well have none. I have never observed any Board member approach any issue concerning the CPD or its mission from a partisan perspective and the CPD has conducted its business in a strictly nonpartisan fashion. As detailed throughout this declaration, it has approached the issue of non-major party candidate participation in the debates it sponsors in a nonpartisan manner and very much as the nonpartisan League did. The CPD sponsors debates because it believes the voters should have the opportunity to view the leading candidates, regardless of the party affiliation or lack thereof, debate in the final weeks of a very long campaign. It has consistently approached candidate selection with this voter education goal in mind.

(Declaration of Dorothy S. Ridings ("Ridings Decl.") ¶¶ 21-22).

Complainants also recycle (from the complaint in MUR 5414 filed in 2004) a collection of statements made or allegedly made by several CPD current or former Board members many years ago. These recycled statements supposedly are evidence of a hostility to non-major party candidate participation in debates sponsored by CPD. In 2004, in response to the same false allegations in MUR 5414, CPD provided sworn declarations from CPD Board members whose statements or alleged statements were targeted. Those sworn declarations lay bare the misleading and inaccurate nature of those allegations in MUR 5414, and which complainants now repeat more than a decade later.

To further complete the record, we attach as Exhibit 3 the declarations CPD first provided in 2004. Those declarations are from Newton Minow (former Commissioner of the FCC, recent recipient of the Presidential Medal of Freedom and current CPD Board member),

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John Lewis (current Congressman, respected civil rights pioneer and former CPD Board member), Alan K. Simpson (former U.S. Senator and former CPD Board member), the late Barbara Vucanovich (former Congresswoman and former CPD Board member) and David Norcross (Attorney and former CPD Board member). Each of these Declarants provided sworn statements to make plain their view that the debates sponsored by CPD should include the leading candidates, regardless of party affiliation, and that CPD's candidate selection criteria have been designed to identify those leading candidates.

Again, the proper focus when determining if CPD supports, endorses or opposes candidates or political parties is on CPD's actions as an organization, not its origins, not the resumes of its directors, and not miscellaneous comments and alleged comments by current or former CPD directors from many years ago. However, CPD provides the foregoing to provide greater context for the very dated, cherry-picked statements on which complainants rely.

B. Individual CPD Board Members' Participation in the Political Process in a Personal Capacity.

Nowhere is complainants' effort to shift the focus from CPD's actions as an organization to collateral issues more misguided than when complainants argue that CPD is ineligible to serve as a debate staging organization because certain of its directors—in *their individual capacities*—have participated in various ways over time in the political process. Complainants cite no authority for the Constitution-bending assertion that only individuals who have refrained from exercising their First Amendment right to participate in the political process in a personal capacity are eligible to serve as a director of a debate staging organization under the FEC's regulations. This proposition is plainly wrong.

Indeed, even the IRS does not ignore the distinction between acts committed in a board member's official capacity and acts committed in his or her personal capacity in determining whether an organization participates in a political campaign in violation of § 501(c)(3). *See, e.g.*, Tax Guide for Churches & Religious Organizations, IRS Pub. 1828, 2012 WL 8144695, at *7 (Jan. 1, 2012) (recognizing that a religious leader's endorsement of a candidate in his or her individual capacity does not constitute political campaign intervention by the section 501(c)(3) tax exempt church); Fed. Election Comm'n, AO 1984-12, *available at* 1984 WL 1022490 (acknowledging the distinction between an organization, and the political action committee created by its board members in their individual capacities).

It is difficult to conceive of an organization that would qualify as a debate sponsor under complainants' test, which requires Board members in their individual capacity to have refrained (without time limitation) from exercising their First Amendment rights to support candidates or otherwise participate in the political process. Complainants' arguments in this regard should be flatly rejected.²

² While complainants seriously err in asserting that the government can condition an individual's service on a debate staging organization's Board on the individual foregoing participation in the nation's political processes in an individual capacity, CPD has long had an informal policy against Board members serving in any official capacity with a campaign while also serving on the CPD Board. (Supplemental Declaration of Janet H. Brown ¶ 6, attached

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C. Allegations Suggesting CPD Bends Its Candidate Selection Decisions To Please Major Party Candidates.

Complainants also have recycled allegations from MUR 4987, made almost twenty years ago about events that happened over twenty-five years ago. Complainants repeat the allegation that CPD only invited Ross Perot to debate in 1992 because the major parties wanted that result. Complainants peddle this untrue version of history in an effort to undercut what is an inconvenient fact for complainants: In the only presidential campaign since CPD was formed in which a non-major party candidate was properly viewed as among the leading contenders for the presidency, CPD invited that candidate to participate in its debates.³

There are multiple problems with complainants' reliance on these already-rejected allegations from twenty-five years ago. First, the allegations are premised on Congressional testimony from an individual associated with President George H.W. Bush's re-election campaign, but that individual did not participate in CPD's decision-making process and was not in a position to know how CPD made its decisions.

Second, in connection with MUR 4987, CPD provided a sworn statement from its Executive Director, who was in a position to know how CPD made its decisions. That Declaration, which is attached hereto as Exhibit 5, described CPD's decision-making process in detail. (See MUR 4987, CPD Resp., Brown Decl. ¶¶ 21-24). As discussed in that Declaration and again in the Brown Declaration submitted with CPD's December 2014 Submission (CPD 12/14 Resp., MUR 6869, Brown Decl. ¶¶ 20-24), that process involved a faithful application of CPD's then-current criteria, which called for the consideration of multiple specified criteria to determine if a candidate had a realistic chance of being elected. The application process involved, first, a recommendation by an independent advisory committee of non-Board members chaired by the late Professor Richard Neustadt and, second, action by the CPD Board on that recommendation.⁴ The decision to include Ross Perot was recommended by the Neustadt

hereto as Exhibit 4). Further, in October 2015, CPD expanded this policy by adopting a formal Political Activities Policy that reflects CPD's view that a debate staging organization better serves the public when it not only conducts its operations in a strictly nonpartisan manner, but when it also adopts and adheres to balanced policies designed to prevent even the potential for an erroneous appearance of partisanship based on political activities undertaken by CPD-affiliated persons in a personal capacity. The CPD policy is intended to deter CPD-affiliated persons from participating, even in a personal capacity, in the political process at the presidential level (including the making of campaign contributions) while serving on the Board, despite the fact no such policy is required by FEC regulations. (Brown Supp. Decl. ¶ 7). That written policy also reaffirms what has always been CPD's Policy: Each and every CPD-affiliated person is to perform his or her duties in connection with CPD in a strictly nonpartisan fashion. Id.

³ In 1992, CPD employed objective criteria that called for the exercise of some judgment in identifying the leading candidates. Those earlier criteria, which the FEC found to comply with FEC regulations in MURs 4473 and 4451, were replaced in 2000 with streamlined criteria which are transparent in their application. The history of CPD's approach to its Candidate Selection Criteria is recited, inter alia, in the Declaration of Janet H. Brown submitted with CPD's December 2014 Submission.

⁴ Professor Richard Neustadt of Harvard University was considered the nation's leading academic authority on the Presidency.

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Advisory Committee and adopted by the CPD Board.⁵ After considering the sworn statements submitted in MUR 5414, the FEC rejected the same allegations complainants advance again in these matters, stating:

[N]one of these individuals participated in the CPD's decision-making process. Therefore, their personal views, even assuming—without supporting transcripts—that Complainant presents them fully and fairly, do not provide a sufficient basis for further investigation of Complainant's allegations concerning the CPD, particularly as the implications Complainant draws from their statements have been refuted by the declarations provided with the CPD response.

(MUR 5414, First Gen. Counsel's Report at 16).

While no additional evidence should be necessary, as noted earlier, we are submitting with this letter a sworn declaration from Dorothy Ridings, former president of the League of Women Voters (the "League") and current CPD Co-Chair. After her tenure with the League and before she joined CPD as a Board member, Ms. Ridings served as a member of the Neustadt Advisory Committee in 1992 and 1996. In her Declaration, Ms. Ridings provides testimony further refuting any insinuation that CPD's candidate selection decisions in 1992 (or 1996) under the old criteria were not independent and the result of its good faith application of the criteria:

In addition, I served on the Advisory Committees discussed in Paragraphs 20-28 of Janet Brown's original Declaration filed in these matters. Those paragraphs also are accurate. The recommendations of the Advisory Committee in 1992 that Ross Perot be included in the 1992 debates and that he not be included in the 1996 debates reflected a good faith, independent application of the CPD's then-current Nonpartisan Candidate Selection Criteria to the facts and circumstances presented in the fall of 1992 and 1996, respectively. Our recommendations, which the CPD Board followed, did not reflect any partisan consideration or influence of any political party or political campaign.

(Ridings Decl. ¶ 6).

In sum, CPD is a proper staging organization because it is tax exempt under 26 U.S.C. 501(c)(3) or (4) and it does "not endorse, support, or oppose political candidates or political parties . . ." 11 C.F.R. § 110.13(a)(1). Complainants' purported evidence bearing on various collateral issues is not relevant to this inquiry, and that evidence also does not support the false narrative Complainants seek to advance.

⁵ The circumstances in 1992 were highly unusual as Mr. Perot had been at various times leading all candidates in the polls before he withdrew from the campaign over the summer. Then, after CPD had made its initial debate invitations but before the first debate, Mr. Perot reentered the race. These circumstances are discussed in more detail in the declarations cited in text.

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II. CPD'S 2012 AND CURRENT CANDIDATE SELECTION CRITERIA ARE PRE-ESTABLISHED AND OBJECTIVE.

Complainants also contend that CPD's candidate selection criteria are not "objective" as required by the FEC's regulations. At bottom, their challenge is to the requirement that all candidates, regardless of party affiliation, have a level of support of at least 15 percent in order to be invited. CPD's criteria have been essentially the same since the 2000 debate cycle, and the FEC has repeatedly considered and rejected charges identical to complainants.⁶ In its recent opinion, the district court directed, "On remand, the FEC must demonstrate how it considered the evidence, particularly, but not necessarily limited to, the newly submitted evidence of partisanship and political donations and the expert analyses regarding fundraising and polling." (Op. at *18).

We have addressed above issues pertaining to political donations and evidence allegedly reflecting partisanship. In this section, we address again the legality of CPD's candidate selection criteria as well as why complainants' agenda-driven "expert" reports do not withstand scrutiny or meaningfully support the result complainants seek.

A. CPD's Prior Submissions Demonstrate its Criteria Comply with FEC Regulations.

The FEC's regulations, found at 11 C.F.R. § 110.13 (c), as amended in 1995, provide in pertinent part as follows:

Criteria for candidate selection. For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.

When adopting the foregoing, the FEC noted that "the choice of which objective criteria to use is largely left to the discretion of the staging organization"; the use of objective criteria is intended "to avoid the real or apparent potential for a *quid pro quo* and to ensure the integrity and fairness of the process"; the criteria cannot be "designed to result in the selection of certain pre-chosen participants"; and "the rule contains an implied reasonableness requirement." 60 Fed. Reg. 64,260, 64, 262 (December 14, 1995). CPD's criteria meets all of these tests.

At pages 6-12 of CPD's 12/14 Response, CPD provided a detailed discussion of: (1) its criteria, (2) the educational purposes for which CPD holds debates, (3) the detailed processes it has gone through in adopting, reviewing and applying its criteria, (4) the reasons CPD adopted 15 percent as its standard, including the fact that it is the same standard applied by the League of Women Voters in 1980, and the fact that there are several modern era examples of non-major

⁶ See Sims, MUR 5530 (2005); Farah, MUR 5414 (2004); Hagelin, MUR 5378 (2004); Englerius, MUR 5207 (2002); Reform Party of U.S., MUR 4987 (2000).

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party candidates who have achieved that level of support, (5) prior attacks on the criteria, including specific attacks directed at the 15 percent requirement (based as here on perceived shortcomings in polling and the challenges faced by independent and third party candidates in running for president), and (6) prior FEC and court rulings rejecting those prior attacks. We will not unduly lengthen this letter by repeating those points here and, instead, incorporate them by reference. We do, though, highlight the following key points bearing on the issues of reasonableness, no pre-selected participants and no *quid pro quo*.

Complainants essentially argue the 15 percent standard is not reasonable and, instead, is the unreasonably high barrier to entry erected by an organization committed to preserving a two-party system. In a sworn declaration submitted with CPD's 12/14 Response to the complaint, CPD's Executive Director, Janet Brown, explained that before adopting the current selection criteria, "the CPD conducted its own analysis of presidential elections over the modern era and concluded that a level of fifteen percent support of the national electorate is achievable by a significant third party or independent candidate." (CPD 12/14 Resp., Brown Decl. ¶ 33). In particular, CPD considered the levels of popular support obtained by non-major party candidates like George Wallace, who polled as high as 20 percent in 1968 pre-election polls, and Ross Perot, who polled close to 40 percent at one point during the 1992 presidential election. (Id. ¶ 33).⁷

CPD also considered the fact that 15 percent was the polling threshold "used in the League of Women Voters' 1980 selection criteria, which resulted in the inclusion of independent candidate John Anderson in one of the League's debates." (CPD 12/14 Resp., Brown Decl. ¶ 33; see also MUR 1287 at 13 of 396; MUR 5414, CPD Resp., Tab A to the Declaration of Dorothy S. Ridings at 3-5). Complainants laud the League, stating "The League was a strictly nonpartisan organization. (Compl. at 16). Complainants never address how the 15 percent standard must be viewed as the unlawful fruit of a bipartisan conspiracy when it is the same standard earlier applied by "a strictly nonpartisan organization." There is but one answer: It is not.

Ms. Brown further explained:

It was the CPD's considered judgment that the fifteen percent threshold best balanced the goal of being sufficiently inclusive to invite those candidates considered to be among the leading candidates, without being so inclusive that invitations would be extended to candidates with only very modest levels of public support, thereby creating an unacceptable risk that leading candidates with the highest levels of public support would refuse to participate.

(CPD 12/14 Resp., Brown Decl. ¶ 32). This latter point, which also bears on the reasonableness of the 15 percent standard, is one complainants completely ignore because it is in conflict with their agenda. But, the point cannot just be wished away. Pursuant to the First Amendment, no

⁷ In *Buchanan*, the court expressly referred to this evidence in affirming the FEC's conclusion in that case that the 15 percent standard is objective and consistent with FEC regulations. 112 F. Supp. 2d at 74.

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candidate may be legally compelled to debate any other, and leading candidates may well choose not to share a stage with candidates who enjoy relatively modest public support. *See, e.g., Fulani v. Brady*, 729 F. Supp. 158 (D.D.C. 1990), *aff'd on other grounds*, 935 F.2d 1324 (D.C. Cir. 1991) ("Indeed, if such a debate [including candidates with very modest support] were staged, this Court maintains serious doubt whether major party candidates—who presumably would be the media draw in the first place—would participate."). This is precisely what happened in 1980, when President Carter refused to share the debate stage with John Anderson. (See CPD 12/14 Resp., Brown Decl. ¶¶ 32-33). Thus, any debate sponsor faces the difficult task of balancing inclusiveness with the goal of ensuring the participation of the candidates in whom the voters are most interested.⁸

Notably, neither proposal advanced by complainants addresses this real world challenge. Complainants at one point suggest it would be sufficiently limiting were CPD to apply solely its first two current criteria: eligibility to serve under the Constitution and ballot access on a sufficient number of state ballots to have the theoretical possibility of garnering 270 Electoral College votes. (Compl. at 49). However, history demonstrates that candidates who have enjoyed only very modest public support (and with whom the leading candidates therefore are unlikely to agree to share a stage) have achieved this goal.⁹ Of course, were ballot access a guarantee of a debate invitation, the number of candidates who would work to achieve it likely would increase, rendering the standard even less workable.

Complainants' main proposal is that one guaranteed debate spot be held for the candidate who gathers the most signatures for ballot access purposes by April 30 of the debate year. (Compl. at 50). As noted in CPD's 12/14 Response, this is a very peculiar proposal for many reasons. It is no measure of public support at all as signing a ballot petition does not involve a choice among candidates. Moreover, even if ballot signatures were an expression of support, it makes little sense, in effect, to make a debate invitation decision based on (a poor) measure of candidate support in April, many months before the debates. Further, most state's ballots do not close until months after April 30, rendering the April 30 date wholly arbitrary. Finally, significant challenges in verifying and counting signatures are very foreseeable. Complainants' utter failure to come up with a viable alternative approach bears noting when considering their full throated attack on of the reasonableness of CPD's approach.

With respect to *quid pro quo*, when adopting its current regulation, the FEC explained that the purpose of the requirement that debate staging organizations employ "pre-established objective" criteria is "to avoid the real or apparent potential for a *quid pro quo* and to ensure the integrity and fairness of the process." 60 Fed. Reg. 64,260, 64, 262 (December 14, 1995). CPD's

⁸ The League of Women Voters grappled with the same issues and came out much the same way in 1980. *See* MUR 5414, CPD Resp., Tab A to the Declaration of Dorothy S. Ridings at 3-5.

⁹ Examples of candidates who have obtained sufficient ballot access to win an Electoral College majority in prior presidential elections include (but are not limited to), Lenora Fulani (1988 and 1992), Ron Paul (1988), Andre Marrou (1992), Harry Browne (1996 and 2000), Michael Badnarik (2004), David Cobb (2004), Michael Peroutka (2004), Bob Barr (2008); Chuck Baldwin (2008), Cynthia McKinney (2008). *See Election Results* (1998-2012). Fed. Election Comm'n, <http://www.fec.gov/pubrec/electionresults.shtml> (last visited Mar. 3, 2017).

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prior submissions demonstrate that its careful approach to candidate selection cannot seriously be said to create the real or apparent potential for a *quid pro quo*. CPD's criteria have always been very publicly announced approximately a full year before the debates. (CPD 12/14 Resp., Brown Decl. ¶¶ 29, 36; Supplemental Declaration of Janet H. Brown ¶ 10, attached as Exhibit 4 ("Brown Supp. Decl.")). The criteria are reduced to writing and call for the application of a standard that is completely transparent. (Brown Supp. Decl. ¶¶ 9-10). In an effort to avoid an appearance that it can manipulate the polling data on which it relies, CPD does not conduct its own polls. Rather, it relies on the average of five high quality, very well-known national polls. (CPD 12/14 Resp., Newport Decl. ¶ 24). To further enhance the integrity of its processes, CPD selects the polls upon which it will rely with the expert assistance of the Editor-in-Chief of Gallup. (CPD 12/14 Resp., Brown Decl. ¶ 35). Dr. Newport makes his recommendations based on the quality of the polls and CPD has always accepted his recommendations. (CPD 12/14 Resp., Newport Decl. ¶ 8). CPD relies on an average of the selected polls to avoid over reliance on any one poll and to reduce the effects of any polling errors. The group of polls that CPD has relied upon has been very stable since 2000, when it first adopted the 15 percent standard. (Id. ¶¶ 9-13). Finally, when it applies its 15 percent standard, it relies on the expert assistance of Dr. Newport to gather the data and then very publicly announces the results of the application of the criteria. (CPD 12/14 Resp., Brown Decl. ¶¶ 35-36; Brown Supp. Decl. ¶¶ 9-10).

In short, CPD has gone to great lengths to approach the challenging issue of candidate selection in a way that is the antithesis of a system that could be manipulated to create the real or apparent potential for a *quid pro quo*.

Finally, with this letter, we submit recently-executed declarations from each of the individual respondents in the pending MURs. (Attached as Exhibit 6). Each Declarant attests that (1) the CPD Board has at all times approached the issue of candidate selection criteria to advance the voter educational purposes of the debates and not with any partisan purpose, (2) he/she believes that CPD's debates should include the leading candidates regardless of their party affiliation or lack thereof, and (3) CPD's candidate selection criteria are designed to identify the leading candidates.

B. Developments Subsequent to CPD's Prior Responses.

Since CPD submitted its 12/14 Response, it has completed another debate cycle, including an exhaustive reexamination of its approach to candidate selection criteria. That review is described in the attached Supplemental Declaration of Janet H. Brown. After that detailed review, CPD determined that while there remains no perfect approach to the vexing question of candidate selection criteria, the 15 percent standard remained the best among the options. At the time CPD announced its 2016 criteria, it issued the following explanatory statement:

The CPD adopted its 2016 criteria based on the recommendations of a working group of its Board chaired by former League of Women Voters president Dorothy Ridings, who serves as a CPD Director. Ridings stated, "We considered a wide array of approaches to the candidate selection issue. We concluded that CPD serves its voter education mission best when, in the

final weeks of the campaign, based on pre-established, published, objective and transparent criteria, it identifies those individuals whose public support places them among the leading candidates and invites them to debate the issues of the day. We also concluded that the best available measure of public support is high-quality public opinion polling conducted near the time of the debates."

Ridings noted that, "Under the CPD's non-partisan criteria, no candidate or nominee of a party receives an automatic invitation. The CPD's objective criteria are applied on the same basis to all declared candidates, regardless of party affiliation or lack thereof." Ridings explained, "During the course of the campaign, the candidates are afforded many opportunities in a great variety of forums to advance their candidacies. The purpose of the criteria is to identify those candidates whose support among the electorate places them among the candidates who have a realistic chance of being elected President of the United States." Ridings added, "The realistic chance need not be overwhelming, but it must be more than theoretical."

CPD Co-Chairs Frank J. Fahrenkopf, Jr. and Michael D. McCurry¹⁰ noted that "We are mindful of the changes in the electorate and the large number of voters who now self-identify as independents. We believe our candidate selection criteria appropriately address this dynamic. The CPD's selection criteria make participation open to any candidate, regardless of the candidate's party affiliation or status as an independent, in whom the public has demonstrated significant interest and support." The Co-Chairs further explained: "It is appropriate for a debate sponsor to take the campaign as it finds it in the final weeks leading up to Election Day. The CPD's debates are not intended to serve as a springboard for a candidate with only very modest support. Participation in the debates is determined by the level of public support a candidate enjoys as Election Day approaches."

(CPD Oct. 29, 2015 Press Release, attached at Tab A to Brown Supp. Decl.)

C. Complainants' Expert Reports Do Not Provide Any Reason To Believe That A 15 Percent Polling Standard Is Unlawful.

As the district court noted, complainants also submitted reports prepared by Dr. Clifford Young and Douglas Schoen with their complaint and the court has directed the FEC to demonstrate how it considered these reports. (Op. at *17). Neither report casts doubt on the legality of CPD's compliance with FEC regulations.

¹⁰ Ms. Ridings has since been elected Co-Chair, as noted.

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1. Clifford Young's Report

As an initial matter, it is erroneous to view the issue of alleged defects in polling as presenting a new and different attack on CPD's candidate selection criteria. The complainants in *Buchanan* made perceived shortcomings in polling a centerpiece of their case. The district court rejected those arguments stating, inter alia, "All polls have a margin of error. However, some degree of imprecision is inevitable in almost any measurement. Such imprecision alone does not make a predictor subjective such that it favors one group of candidates over another." *Buchanan*, 112 F. Supp. 2d at 75.

Indeed, the wisdom of relying on polling to measure public support can only be answered by considering the alternatives. Dr. Frank Newport, Gallup's Editor-in-Chief and a former president of the American Association for Public Opinion Research, stated in his declaration submitted by CPD with its December 2014 Response, as follows: "Public opinion polling is by far the best method of measuring a candidate's support among the electorate prior to Election Day." (CPD 12/14 Resp., Newport Decl. ¶ 16). Neither of complainants' experts identifies any other remotely accurate means of measuring electoral support before Election Day.

Rather than suggest a reasonable alternative, Dr. Young's report is primarily focused on the sentence quoted above from the *Buchanan* case: "Such imprecision alone does not make a predictor subjective such that it favors one group of candidates over another." Young takes as his assignment making an argument that polling suffers from just that defect.

He fails to make the case. Dr. Young seeks to demonstrate that polling in three-way races is more error-prone than polling in two-way races and that the probability of being falsely excluded from a debate is higher for candidates polling just over the 15 percent threshold than it is for a candidate who clears the bar by a wide margin. These assertions cannot properly serve as the basis for finding that CPD's 15 percent standard is not objective as required by FEC regulations.

First, Young's argument that polling in three-way races is particularly error prone proceeds from a false premise. His data assumes that error should be defined as the absolute difference between a candidate's polled level of voter support and the candidate's actual results on Election Day. (Young Report ¶¶ 46-49). But this is erroneous. CPD relies on polls as the best known way to "measure the true level of public support at the time the poll is administered, not on Election Day." (CPD 12/14 Resp., Newport Decl. ¶ 20). Events can change support (i.e., a late-breaking news stories) and many factors can affect voter turnout on Election Day. A variation between polled measures of support several weeks before an election and actual Election Day results does not necessarily mean the earlier measure of support was wrong. Indeed, complainants' other expert, Douglas Schoen, acknowledged this distinction. Schoen stated: "Perhaps, though, three way polls are not inaccurate per se, but still lack predictive power due to the volatility of three-way races. . . . When I say 'inaccuracy', hence, I do not mean that the polls necessarily have not captured voters' sentiments at the time the poll was conducted, but that they are inaccurate in terms of predicting the final election results." (Schoen Report at 27). Consistent with this, Dr. Frank Newport, Editor in Chief of Gallup, has provided a sworn statement expressing his professional opinion that "[t]here is nothing about support for a

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significant third party candidacy that makes it more difficult to measure.” (CPD 12/14 Resp., Newport Decl. ¶ 21).

Second, Young’s analysis of supposed polling error in three-way races is based entirely on gubernatorial elections, which, as even he recognizes, are more error prone than presidential elections. (Young Report ¶ 57). Frank Newport explained in his declaration that “[a] presidential race involves a larger portion of the electorate, engages more voters nationwide, and presents fewer obstacles in identifying likely voters.” (CPD 12/14 Resp., Newport Decl. ¶ 19). Young attempts to correct for this by taking the difference in error rates (average absolute difference) between gubernatorial and presidential election two-way races and adjusting the error rates in three-way gubernatorial races by the same amount. In other words, while Young acknowledges that gubernatorial races are more error-prone than presidential elections, he assumes that the difference in error between gubernatorial and presidential elections remains constant when there are two or three candidates involved. Young’s report, however, provides no support for this assumption.

Third, Young’s report calculates the probability of a candidate being falsely excluded due to the “error” or average absolute difference in three-way races, but ignores the possibility that the same error could also result in false positives—the inclusion of candidates who actually fell below the 15 percent polling threshold. As the federal district court noted in *Buchanan*, a poll is not subjective simply because it is subject to error, particularly when the error could just as easily “push into the debate a third party candidate who had only 11% actual support” and “plaintiffs did not present any evidence to suggest that these problems would systematically work to minor-party candidates’ disadvantage.” *Buchanan*, 112 F. Supp. 2d at 75. Complainants’ other expert, Douglas Schoen, recognized as much when, in discussing an analysis of absolute error in three-way races, he stated: “it was wholly unclear whether the polling over-or underestimated the potential of the third party candidate, with some polls missing a runaway by the major-party contender and others unable to foresee a third-party victory.” (Schoen Report at 26).

Finally, Young’s report provides no evidence that any alleged polling error actually has systematically disadvantaged third-party and independent candidates at the presidential level. To the contrary, in the 2016 elections, national polls overestimated the electoral support of Libertarian Party candidate, Gary Johnson, and Green Party candidate, Jill Stein as compared to their performance on Election Day. When CPD applied its candidate selection criteria on September 16, October 4 and October 14, candidate Johnson averaged support ranging from 7 percent to 8.4 percent and candidate Stein averaged support ranging from 2.2 to 3.2 percent. (Brown Supp. Decl. ¶¶ 12-14). However, on Election Day 2016, Johnson obtained only 3.3 percent of the popular vote, and Stein obtained only 1 percent. See 2016 Presidential General Election Results, U.S. Election Atlas, <http://uselectionatlas.org/RE%20RESUL/national.php>. Following Young’s analysis, Johnson and Stein were far more likely to benefit from a false *positive*—meaning, falsely including candidates who failed to meet the 15 percent polling threshold—than any major-party candidate.

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In sum, none of the findings in Young's report suggest that the 15 percent threshold, as applied by CPD, is anything other than an objective measurement of a candidate's support before the debates and there is no evidence that any deficiencies in the process of applying the standard work systematically against non-major party candidates.

2. Douglas Schoen's Report

Complainants also submitted a report from Douglas Schoen, who concludes that an independent candidate should expect to spend \$266,059,803 to run a campaign capable of reaching 15 percent support in the polls by September of election year. (Schoen Report at 18). Schoen's conclusion is intended to support the argument that this figure means the 15 percent standard is unreasonably high. Schoen's report and conclusions do not withstand scrutiny.

First, it is entirely unclear from the report that Schoen is even qualified to conduct such analyses. Schoen describes himself as a political analyst, pollster, and author. (Id. at 1). Schoen's experience, as summarized in his report, includes conducting qualitative and quantitative analysis, with a focus on the candidate's messaging, and designing and conducting polls. (Id.) His report does not explain or even refer to any experience he may have in preparing advertising budgets, media campaigns, estimating the cost of such campaigns, or any other bases to support his alleged expertise in performing the analysis presented as part of his opinion. This omission is especially noteworthy here given the flaws in his report.

Second, the foundation of Schoen's analysis is an unidentified "plan" from Canal Partners Media which, according to Schoen, estimated that it would cost at least \$100,000,000 to buy the ad time necessary for an unknown candidate to reach 60 percent name recognition. While Schoen purports to "follow the guidelines their plan establishes," (id. at 6), complainants have not provided any documentation of the Canal Partners analysis; Schoen does not explain how he (or Canal Partners Media) arrived at these numbers; and the report does not contain sufficient information to allow CPD (or the FEC) to verify his methods and results.

Third, Schoen's analysis builds on the Canal Partners "plan" with a series of conclusory statements, back-of-the-envelope calculations, and unexplained assumptions, most of which are not supported with any citations or references. Worse still, Schoen gave no serious consideration to other plans or means to achieve name recognition. While he acknowledged that "the internet and social media are changing political communications by introducing new ways to reach voters," he summarily concludes, without any analysis, that "[n]o serious candidate can expect to rely primarily on lower-cost social media in order to drive awareness." (Id. at 10). The absence of any analysis of lower-cost methods of reaching voters is troubling, considering reports that the share of registered voters who follow political figures on social media has increased rapidly in recent years.¹¹

¹¹ See, e.g., Monica Anderson, *More Americans are using social media to connect with politicians*, Pew Research Center, available at <http://www.pewresearch.org/fact-tank/2015/05/19/more-americans-are-using-social-media-to-connect-with-politicians/> (last visited Mar. 3, 2017).

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Fourth, Schoen's report simply assumes with no credible analysis that non-major party candidates are "deprived of free media attention." (Id. at 4-5). Schoen has already been proven wrong by the 2016 campaign. In addition to social media, the cable and broadcast outlets are now so numerous and so ravenous for content that non-major party candidates are enjoying access to free media at unprecedented levels. In what surely is an incomplete list, the attached Supplemental Declaration of Janet Brown identifies over 60 appearances by candidates Johnson or Stein on ABC, CBS, CNN, Fox, MSNBC, CBSN, PBS, C-SPAN USA Today, Time, People, New York Times and many more. (Brown Supp. Decl. ¶ 16).

Fifth, putting aside Schoen's speculative and incomplete analysis, his report, even if accurate, does not provide any grounds to suggest that CPD's criteria are subjective or otherwise unlawful. While Schoen purports to estimate the cost for a "near-unknown" candidate to reach 15 percent in the polls and to ultimately compete with major party candidates, it is not all evident why this scenario should serve as the touchstone under the FEC's regulations. Many third-party and independent candidates for president are not "unknown," and most individuals seeking a major party nomination have spent many years building their name recognition and support. It is not at all reasonable to measure the objectivity of candidate selection criteria for the general election presidential debates by the costs an unknown candidate allegedly would need to incur in a single campaign to achieve a 15 percent level of support.

Finally, complainants misapprehend the law. FEC regulations require pre-established and objective candidate selection criteria; but at no point has the law ever required debate-staging organizations to make their criteria equally attainable by all who wish to participate, let alone "unknown" candidates. *See, e.g., McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1450 (2014) ("[I]t is not an acceptable governmental objective to 'level the playing field,' or to 'level electoral opportunities,' or to 'equaliz[e] the financial resource of candidates.'"). CPD is not required to level the playing field for candidates who may find it extremely challenging in a single campaign cycle to reach an objective threshold of voter support that otherwise is wholly sensible when seeking (1) to identify the leading candidates who have a more than theoretical chance of being elected and, then (2) hold a debate that actually includes those leading candidates.¹²

Ultimately, the Schoen report begins with a series of unverifiable estimates, and then piles inference upon inference in order to arrive at an irrelevant conclusion.

* * *

¹² We are unaware of any example in presidential election history in which a candidate who could not even muster 15 percent support a few weeks before the election ever has been elected, or for that matter, even won a single Electoral College vote. To the extent debates are intended to include those candidates who have a more than purely theoretical chance of being elected, a 15 percent standard could be said to be too low. However, as the League of Women Voters did, CPD has determined to include any candidate who achieves that level of support. *See* MUR 5414, CPD Resp., Tab A to the Declaration of Dorothy S. Ridings at 5.

LOSS, JUDGE & WARD, LLP

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CPD is a proper staging organization under the FEC's regulations and it goes to great lengths to ensure that it employs "pre-established objective" candidate selection criteria, as required by those regulations. CPD respectfully urges that the complaints herein be dismissed.

Respectfully submitted,

Loss, Judge & Ward, L.L.P.

By:


Lewis K. Loss
Uzoma N. Nkwonta

Attachments

cc: Jeff S. Jordan, Esq. (w/attachments)
Supervisory Attorney, Central Enforcement Docket

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INDEX OF EXHIBITS

- **Exhibit 1:** Declaration of Frank J. Fahrenkopf, Jr.
- **Exhibit 2:** Declaration of Dorothy S. Ridings
 - Tab A: The 1980 Presidential Debates: Behind the Scenes
- **Exhibit 3:** Declarations of Former CPD Board Members Submitted in MUR 5414
 - Declaration of Alan K. Simpson
 - Declaration of Newton Minow
 - Declaration of Barbara Vucanovich
 - Declaration of John Lewis
 - Declaration of David Norcross
- **Exhibit 4:** Supplemental Declaration of Janet H. Brown
 - Tab A: CPD October 29, 2015 Press Release
 - Tab B: CPD September 16, 2016 Press Release
 - Tab C: CPD October 4, 2016 Press Release
 - Tab D: CPD October 14, 2016 Press Release
- **Exhibit 5:** Declaration of Janet H. Brown Submitted in MUR 4987
- **Exhibit 6:** Declarations of Remaining Individual Respondents
 - Declaration of Michael D. McCurry
 - Declaration of Howard G. Buffett
 - Declaration of John C. Danforth
 - Declaration of John Griffen
 - Declaration of Antonia Hernandez
 - Declaration of John I. Jenkins
 - Declaration of Newton N. Minow
 - Declaration of Richard D. Parsons
 - Declaration of Alan K. Simpson

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EXHIBIT 1

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enjoy only very modest levels of public support. The CPD's candidate selection criteria are designed to identify the leading candidates.

5. I have never observed any Board member ever approach any issue concerning the CPD or its mission from a partisan perspective and the CPD has conducted its business in a strictly nonpartisan fashion.

6. Complainants have cited various statements from around the time the CPD was formed to urge that CPD is partisan in its operations and adverse to independent or third party candidates participating in the debates CPD sponsors. This is not correct.

7. CPD was organized in response to the recommendations of two separate studies on presidential elections and debates: (1) the April 1986 Final Report of the Commission on National Elections, entitled Electing the President: A Program for Reform, a nine-month study of presidential elections by a distinguished group of news executives, elected officials, business people, political consultants, and lawyers conducted under the auspices of the Georgetown University Center for Strategic and International Studies, and (2) the Theodore H. White Conference on Presidential Debates held in March 1986 at the Harvard Institute of Politics and chaired by Newton Minow, former chairman of the Federal Communications Commission. (President Barack Obama recently awarded Mr. Minow the Presidential Medal of Freedom, the nation's highest civilian award).

8. Both of those studies underscored the importance presidential debates had assumed in American electoral politics. Rather than permit the existence of debates to turn on the vagaries of each election, the studies recommended that the debates be "institutionalized." More specifically, both studies recommended that the two major

political parties create a mechanism designed to ensure, to the greatest extent possible, that debates become a permanent and integral part of the presidential election process.

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9. At that time, Paul G. Kirk, Jr., and I served as chairmen of the Democratic National Committee ("DNC") and Republican National Committee ("RNC") respectively, and we responded, in 1987, by initiating CPD as a not-for-profit corporation separate and apart from either party organization. The CPD is and always has been governed by an independent Board comprised of distinguished Americans. CPD receives no party or governmental funding. Paul Kirk's term as party chairman expired in 1989, as did mine. For over 28 years now, no Board member has held a position with either of the major parties. Simply stated: The CPD operates completely independently of the major parties.

10. When the CPD was formed, the goal was to institutionalize general election televised debates for the good of the public, and the major impediment to achieving that goal was securing the commitment of both major party nominees to debate. References to the CPD as bipartisan at the time of its formation must be understood with reference to this challenge and the huge stride forward that forming CPD represented.

11. Very shortly after we formed CPD, we realized that our educational mission would be incomplete unless we identified a mechanism for identifying any non-major party candidate who properly should be considered a leading candidate and, therefore, invited to participate in debates sponsored by CPD. Thus, before CPD sponsored its first debate and ever since, it has extended debate invitations pursuant to written, publicly announced nonpartisan candidate selection criteria designed to identify the leading candidates, regardless of party affiliation or lack thereof.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
March 1, 2017.


Frank J. Fahrenkopf, Jr.

EXHIBIT 2

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Commission on Presidential Debates) MUR 4987

DECLARATION OF DOROTHY S. RIDINGS

I, Dorothy S. Ridings, give this declaration based on personal knowledge.

1. I serve as Co-Chair of the Board of Directors of the non-profit, nonpartisan Commission on Presidential Debates (the "CPD"), which is a voluntary, unpaid position. I have served on the CPD Board since April 1997 and was elected Co-Chair in December 2016. I have never held a position with any political party, and my service on the CPD's Board is not tied to any political party.

2. From 1982-1986, I served as the President of the League of Women Voters of the United States (the "League"). Prior to that time, I was associated with the League in other capacities since 1976.

3. From 1996 - 2005, I served as President and CEO of the Council on Foundations. In addition, I served for several years as a Director of the Foundation Center, and I served for twenty-one years as a Trustee of the Louisville Presbyterian Theological Seminary.

4. Prior to joining the Council on Foundations, I was the Publisher and President of The Bradenton Herald (Bradenton, Florida) from 1988-1996 and a General Executive of Knight-Ridder, Inc. from 1986-1988. I also have worked as an editor, a writer, an adjunct professor, and as a technical assistant on a public housing project. I obtained my

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bachelor's degree from Northwestern University and my master's degree from the University of North Carolina.

5. I submit the declaration in response to the complaints that have been filed in MURs 6869R and 6942R. I have reviewed the Declaration and Supplemental Declaration filed by Janet H. Brown in these matters. Rather than unduly lengthen this Declaration, I affirm that those Declarations accurately state the facts with respect to all time periods during which I have served on the CPD Board.

6. In addition, I served on the Advisory Committees discussed in Paragraphs 20-28 of Janet Brown's original Declaration filed in these matters. Those paragraphs also are accurate. The recommendations of the Advisory Committee in 1992 that Ross Perot be included in the 1992 debates and that he not be included in the 1996 debates reflected a good faith, independent application of the CPD's then-current Nonpartisan Candidate Selection Criteria to the facts and circumstances presented in the fall of 1992 and 1996, respectively. Our recommendations, which the CPD Board followed, did not reflect any partisan consideration or influence of any political party or political campaign.

7. I am familiar with and was deeply involved in the League's sponsorship of general election presidential debates in 1976, 1980 and 1984. The League's goal in sponsoring general election debates, like that of the CPD, was to provide the electorate with the educational opportunity of seeing debates among the leading contenders for the Office of the President.

8. Attached to this Declaration at Tab A is a copy of "The 1980 Presidential Debates: Behind the Scenes," a League of Women Voters Education Fund publication. This publication provides a contemporaneous review of a number of aspects of the League's

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1980 debates; with special emphasis on the League's approach to candidate selection. As stated in the publication, "no issue took more attention or involved more discussion than the development of" the League's candidate selection criteria. *Id.* at 4. As stated in the publication attached at Tab A, "The [League's] Criteria for selecting candidates to appear were based on the FEC's requirements and the League's own long-standing and strict standards for offering voters reliable, nonpartisan pre-election information about candidates and their positions on issues." *Id.*

9. The League's candidate selection criteria for the two general election presidential debates it sponsored in 1980 were near-identical to the criteria the CPD has used since 2000: constitutional eligibility, ballot access, and demonstrated significant voter interest and support. As reflected in the League publication attached hereto, a candidate could satisfy the League's demonstrated voter interest requirement either by obtaining the nomination of a major party or by achieving a fifteen percent level of national support (or a level of support at least equal to that of a major party nominee) in selected national public opinion polls. The fifteen percent level of support standard was at the low end of the range considered by the League for the purpose of identifying the leading candidates. *Id.* at 5.

10. Based on the application of the foregoing criteria, independent candidate John Anderson was invited to participate in the first presidential debate sponsored by the League in 1980. However, President Carter declined to participate in that debate because of the presence of the independent candidate. As a result, Mr. Anderson and Ronald Reagan, then the Republican nominee, participated in a two-candidate debate without President Carter.

11. After the nationally televised presidential debate in which he participated, Mr. Anderson's support in the polls dropped, taking his support level below fifteen percent in four of five polls reviewed by the League after its first debate. Consequently, when the League sponsored a second debate in 1980, only candidates Carter and Reagan were invited, and the debate went forward between those two candidates.

12. As the events of 1980 well demonstrate, an organization such as CPD that seeks to sponsor general election debates among the leading candidates for the Office of the President faces a difficult challenge. No candidate is obligated to debate, and there is a significant risk that a leading candidate would not agree to share the debate stage with a candidate who enjoys only modest levels of national public support. Thus, the debate sponsor's legitimate goal in formulating its candidate selection criteria is to be sufficiently inclusive so that any candidate properly considered a leading candidate is invited to debate, but not so inclusive that one or more of the candidates in whom the public has demonstrated the greatest level of support refuses to debate. Given that the purpose of the CPD's debates is to afford the voting public an opportunity to sharpen their views, in a debate format, of the principal rivals for the Presidency, the absence of one of the leading candidates would dramatically undercut the educational purpose of its debates and would not well serve the public.

13. I have been personally involved in the process by which CPD has adopted and applied its candidate selection criteria for each debate cycle starting in 2000. Each cycle, the CPD considers anew how best to achieve the CPD's educational goals. Contrary to what I understand the complainants have claimed, the CPD's candidate selection criteria have not been adopted or applied with any partisan or bipartisan purpose. They have not

been adopted or applied with the intent to keep any party or candidate from participating in the CPD's debates or to bring about a predetermined result. Rather, the Criteria were adopted to further the legitimate voter education purposes for which CPD sponsors debates.

14. In connection with the debates it sponsored in 1988, 1992 and 1996, CPD employed an approach to candidate selection that involved the consideration of multiple factors in an effort to identify those candidates with a "realistic chance of being elected." The earlier criteria, like the current criteria, were intended to identify the leading candidates for the Presidency. It is my understanding that the Federal Election Commission rejected a challenge to the CPD's earlier criteria brought in 1996 and found that the CPD's criteria were "objective" and otherwise consistent with the FEC's regulatory requirements. Although it would have been easier in some respects simply to employ again in 2000 the criteria that had already withstood legal challenge in 1996, the CPD recognized from the experience in 1996 that its contribution to the electoral process likely would be enhanced by adopting criteria that were clearer and simpler, and the application of which would be very straightforward.

15. One of the criteria the CPD has applied since 2000 is the requirement that a candidate have a level of support of fifteen percent of the electorate as determined by the average of five selected high-quality national public opinion polls, as described more fully in the CPD's Criteria. The CPD's selection of fifteen percent as the requisite level of support was preceded by careful study in 2000 and in each election cycle since that time and reflects a number of considerations. It has been CPD's considered judgment that the fifteen percent threshold best balanced the goal of being sufficiently inclusive to invite those candidates considered to be among the leading candidates, without being so inclusive that

invitations would be extended to candidates with only very modest levels of public support, thereby creating an unacceptable risk that leading candidates with the highest levels of public support would refuse to participate.

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16. I understand that the complainants have alleged that the fifteen percent is an unattainable level of support for an independent or minor party candidate to achieve without participation in the debates. CPD's review of the historical data is to the contrary. As noted, John Anderson achieved this level of support prior to the first debate in 1980 and, therefore, was invited by the League to debate. Other independent and third-party candidacies from the modern era demonstrate the point as well. George Wallace achieved significant voter support in 1968, and Ross Perot enjoyed a high level of popular support in 1992, particularly before he withdrew from the race in July of 1992. (Mr. Perot subsequently re-entered the race shortly before the 1992 debates.) It has been and remains my view that a non-major party candidate who captures the public's imagination would be able to achieve a level of support of at least fifteen percent.

17. The CPD has considered, but ultimately has rejected, a variety of other approaches to candidate selection. We have considered the possibility of using eligibility for public funding of general election campaigns as the criterion for debate participation rather than another measure of public support. However, that criterion is itself both potentially overinclusive and underinclusive. Eligibility for general election funding is determined based on performance in the prior presidential general election. Such an approach would be underinclusive to the extent that it would automatically preclude participation by a prominent newcomer (such as Ross Perot in 1992), but would be overinclusive to the extent it would mandate an invitation to the nominee of a party that

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performed well in a prior election, but who did not enjoy significant national public support in the current election. In addition, while the Congress determined that five percent was a sufficient level of support for purposes of determining eligibility for federal funding as a "minor" party (at a level that is substantially lower than that received by the "major" parties), as noted, a debate host hoping to present the public with a debate among the leading candidates (none of whom are required to debate) must necessarily take into account a different set of considerations.

18. CPD has considered simply inviting all candidates who are successful in gaining ballot access in a sufficient number of states to garner a theoretical Electoral College majority. After studying the historical record, CPD concluded that ballot access success (typically achieved by a process of collecting voter signatures that does not involve the signer making any choice among candidates) is a very poor proxy for gauging the public's interest in a candidate and has been achieved by candidates with very modest public support. Further, we realized that were debate invitations determined by ballot access, there likely would be a surge in candidates achieving high levels of ballot access without necessarily corresponding levels of public support and interest.

19. CPD also has considered the proposal made by certain complainants -- that a guaranteed debate invitation be extended to whatever non-major party candidate has achieved the greatest number of ballot access signatures nationally as of a date in April in an election year. This makes little sense to us, not only because success gathering such signatures is a very poor proxy for public support as a general matter, but also because it is unworkable. Most states ballots do not close until much closer to the election. The April cut-off is wholly arbitrary and seems designed simply to reward a well-funded candidate

who can hire signature collectors. The fact that a candidate is able to amass millions of signatures by a date in April of an election year seems a very peculiar way to measure the public's interest in that candidate many months later as the debates and Election Day draw near. Moreover, there would be no reliable way to verify or count the signatures, and the approach seems a recipe for confusion and legal challenges.

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20. CPD is aware that polling is not perfect and that there is commentary each election cycle regarding the reliability of polling. After close study, it has been our judgment, as it was the League's before CPD was formed, that high quality public opinion polling conducted as Election Day and the debates draw near is the best measure of candidates' public support and the best means to identify the leading candidates.

21. In closing, I was not involved in the design or creation of the CPD. Frankly, I viewed the CPD skeptically when it was formed. I understood that its initial design, with the then-major party chairs serving as the CPD's co-chairs, was intended to help ensure major party candidate participation and thereby institutionalize the debates. This was a laudable goal. However, I was concerned that CPD would not be sufficiently independent of the major parties, and I also was uncertain whether CPD would properly address the issue of non-major party candidate participation in the debates it would sponsor. CPD's actual performance has wholly allayed my concerns.

22. I have been enormously pleased over the last thirty years as the CPD has operated independently of any political party or campaign. Since 1989, no party official has served on the CPD Board and it receives no party or governmental funds. While many Board members can be identified as having participated in our nation's public life in various ways through one or another of the major parties, that is true of most civic leaders in our

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nation. There are and have been over the years Board members whose political affiliation I simply do not know, and they may well have none. I have never observed any Board member approach any issue concerning the CPD or its mission from a partisan perspective and the CPD has conducted its business in a strictly nonpartisan fashion. As detailed throughout this declaration, it has approached the issue of non-major party candidate participation in the debates it sponsors in a nonpartisan manner and very much as the nonpartisan League did. The CPD sponsors debates because it believes the voters should have the opportunity to view the leading candidates, regardless of the party affiliation or lack thereof, debate in the final weeks of a very long campaign. It has consistently approached candidate selection with this voter education goal in mind.

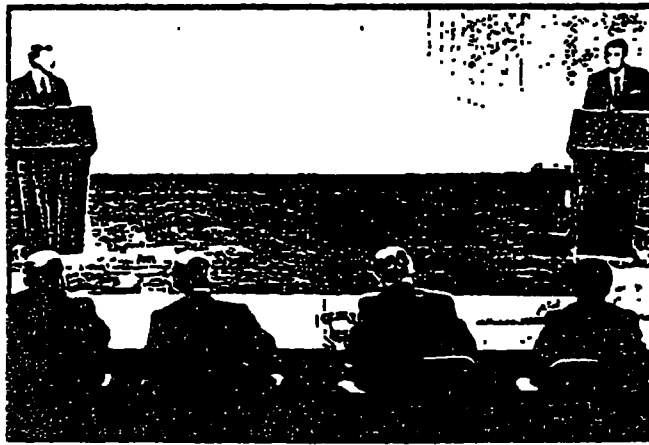
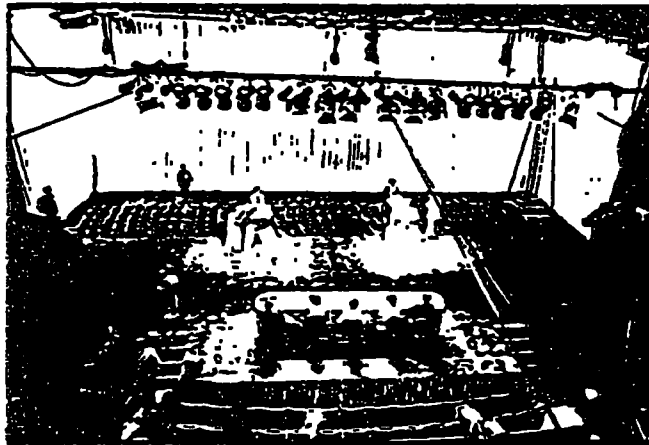
I declare under penalty of perjury that the foregoing is true and correct. Executed on February 20, 2017.


Dorothy S. Ridings

TAB A

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THE 1980 PRESIDENTIAL DEBATES: BEHIND THE SCENES



League of
Women Voters
Education Fund

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The LWVEF gratefully acknowledges the many cash and in-kind contributions by corporations in Baltimore and Cleveland to defray site expenses.

The LWVEF also acknowledges, with great appreciation, the many cash and in-kind contributions of League members and citizens throughout the country to defray the costs of the Forums and Debates.

The 1980 Presidential Debates: Behind the Scenes

On October 28, 1980, 120 million Americans, the largest television audience in our nation's history, watched Jimmy Carter and Ronald Reagan debate face-to-face. This event climaxed a long and grueling presidential campaign. Interest in it — on the part of both press and public — intensified as the long-playing drama unfolded and election day approached. Would the major presidential candidates actually face one another in what had been billed as the superbowl of the 1980 election?

The League of Women Voters, which sponsored this and the preceding Debate between Ronald Reagan and John Anderson, as well as three Presidential Forums during the primary season, undertook many roles during that critical time. It was by turns negotiator, mediator, fundraiser and producer, as it tried to overcome the obstacles and resolve the conflicting aims of all those with a stake in the debates. The public clearly wanted to see and hear presidential candidates at the same time, in the same place and under the same conditions. The candidates and their strategists understandably were seeking the most advantageous conditions and were anxious to control the terms of debates. If they didn't get what they wanted at any given time — conditions that changed as the political fortunes of the campaign shifted — they could walk away. The League's difficult job was to resolve those often conflicting interests and make the Presidential Debates a reality.

Against considerable odds, the League was successful in making two Presidential Debates happen in 1980 — Debates that set several benchmarks that promise to have a lasting effect on the way voters choose their presidents. It was the first time a debate sponsor grappled with the participation of nonmajor party candidates, an issue that is likely to persist in future debate presentations. What is perhaps more important, the League's successive sponsorship of 1976 and 1980 Presi-

dential Forums and Debates puts the organization well on the way toward achieving one of its major voters service goals — to establish such debates as an integral part of every presidential election.

Laying the Groundwork for 1980

The League's determination to sponsor Presidential Forums and Debates in 1976 and 1980 was deeply rooted in its own history and sense of mission. The League has been committed to providing a variety of services to voters since its founding in 1920. State and local Leagues throughout the country have for years offered nonpartisan arenas for candidates to discuss campaign issues so that voters could make side-by-side comparisons of the candidates and their views. These candidate events have dealt with every elective office from local school boards to the United States Senate.

When the League set out in 1976 to bring presidential candidates together in a series of primary forums and general election debates, its sponsorship was thus a natural, though major, extension of the long tradition of these state and local League-sponsored candidate events. And the timing was right. There had not been presidential debates since 1960, when John Kennedy and Richard Nixon faced one another in network-sponsored debates. Sixteen years later, in 1976, the public wanted presidential debates (a Gallup poll showed that seven out of 10 people were in favor of debates), and very significantly, the candidates wanted them, too. With this tide flowing in its favor, the League was successful in its first Presidential Debates project. By the end of the 1976 election season, the League had presented four Forums at key points during the primaries and three Debates between the Republicans' candidate, Gerald Ford, and the

Democrats' candidate, Jimmy Carter, as well as one between their running mates, Robert Dole and Walter Mondale.

As the next presidential campaign approached, the League's national board weighed the merits of making so major an effort once again. The League knew from experience that there was a huge "consumer demand" for more thoughtful treatment of the issues in the campaign and for getting the candidates to discuss their positions on the issues in a neutral setting. The board concluded that debates could serve as essential a role in 1980 as they had in 1976, by providing a necessary alternative to the 30- and 60-second spots and the paid political programs.

Once again, the League mobilized state and local Leagues throughout the country, undertook a massive fundraising drive, hired staff to

direct the project, began visiting potential debate sites and committed the whole organization to ensure that a series of Presidential Forums and Debates would be a part of the 1980 presidential election.

As it turned out, a series of four Presidential Forums throughout the primary season was scheduled, only three of which took place. Though the original schedule provided for events at each site, one for Democratic aspirants, one for Republican aspirants, political reality dictated that in 1980 only Republican candidates met face-to-face to address key campaign issues. The opposite was true in 1976 when forums took place only between Democratic candidates. (See Appendix A for details on 1980 Forums).

Near the end of the 1980 primaries, Ford and Reagan and Jimmy Carter, who each se-

The League of Women Voters Education Fund — Sponsor of the Debates

The League of Women Voters Education Fund (LWVEF) was established in 1957 as a research and citizen education organization (with 501(c)(3) tax status) by the League of Women Voters of the United States (LWVUS), a membership and action organization (with 501(c)(4) tax status) dedicated to promoting political responsibility through informed and active participation of citizens in government.* The LWVEF provides local and state Leagues as well as the general public with research, publications and other educational services, both on current issues and on citizen participation techniques. The network of local Leagues has a multiplier effect in bringing the Education Fund's services to the wider public. Through workshops, conferences and the distribution of publications, Leagues disseminate the LWVEF's research and "how-to" citizen aids.

On the national level, the Education Fund's historic 1976 Presidential Forums and Debates paralleled the service to voters that local and state Leagues provide at election time with candidate meetings. The Forums were the first series of their kind presented before the primaries, and the Debates marked the first time in more than 16 years that presidential candidates met face-to-face.

*The two organizations, LWVUS and LWVEF, are explicitly identified in the text only where the distinctions are important to the particular points being discussed. Otherwise, the term "League" is used throughout to refer to the LWVEF.

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likely to be his party's nominee, publicly agreed to participate in League-sponsored Debates that fall. In fact, Reagan's announcement came during the last League-sponsored Forum on April 23 in Houston, Texas. Moderator Howard K. Smith put the direct question to Reagan and to George Bush: "If nominated by your party, would you agree to participate [in League-sponsored Presidential Debates]?" Governor Reagan's reply: "I can't wait."

Carter's promise came on May 5, 1980 when he addressed the national convention of the League of Women Voters of the United States in Washington, DC. He was asked, "Mr. President... we'd like to know if you'd give your promise to us today to participate in the League-sponsored Presidential Debates this fall if you are the nominee of the Democratic Party." Mr. Carter's reply: "Yes! Yes I will be glad to participate this fall if I am the nominee. It would be a great pleasure to be the nominee and to debate..."

With public commitments in hand, the League turned toward several other issues related to the Debates, such as eligibility requirements for candidate participation, format, number of debates, and selection of debate sites. As a means of soliciting preliminary advice on these and other topics, the League's board established a 28-member Public Advisory Committee on Presidential Debates. The committee was chaired by Carla Hills, former Secretary of Housing and Urban Development with the Ford Administration, and Newton Minow, former chairman of the Federal Communications Commission under President Kennedy.

In July, the League's board announced its proposed schedule for the series: three Presidential Debates and one Vice-Presidential Debate, starting in September. At the same time, they reviewed some 20 potential debate sites and identified Baltimore, Maryland; Cleveland,

Ohio; Louisville, Kentucky; and Portland, Oregon, as the proposed sites for these Debates. Geographical diversity was a factor in selecting the sites, as was the availability of suitable facilities.

What was left to determine were the criteria by which candidates would be invited to debate — a process that was to become a *cause célèbre*.

Criteria: The Debate About Who Should Debate

The inclusion of independent and third-party candidates in presidential debates was completely uncharted territory. There was no history to look back on. The Kennedy-Nixon debates in 1960 and the Ford-Carter debates in 1976 had set a precedent for debates between major-party candidates, but there was no precedent for how to deal with the fact that from time-to-time an independent or minor-party candidate emerges as a significant force in a presidential campaign. Since 1980 seemed to be such a year, it was imperative that the League set objective criteria early by which to determine which candidates merited treatment as "significant."

Literally dozens of candidates were interested in being included. Yet the goal of having candidates deal with the issues in some depth would be defeated if the cast of characters became too large. The League knew that it would also be much harder to get the major-party candidates to agree to debate if they had to share the platform with candidates they considered less significant. Therefore, the League decided not only to establish criteria for the selection of debate participants, but also to announce these criteria well before applying them, so that both the public and the candidates would know all the rules.

For the League, no issue took more attention or involved more discussion than the development of these criteria. The League knew that such criteria would not only play a critical part in the 1980 debates planning, but also that these criteria and the process by which they were determined would be carefully scrutinized. Moreover, the Federal Election Commission (FEC), the agency set up to regulate federal elections, would view the criteria as a measure of the League's nonpartisanship. (The FEC permits a debate sponsor to exercise its discretion as to whom to invite as long as debates are nonpartisan and include at least two candidates. See box, p. 8, for a detailed description.)

The criteria for selecting candidates to appear were based on the FEC's requirements and the League's own long-standing and strict standards for offering voters reliable, nonpartisan pre-election information about candidates and their positions on issues. They had to be nonpartisan; they had to be capable of objective application, so that they would be as free as possible from varying interpretations; and they had to be easy to understand.



UPI
LWV President Ruth J. Hinerfeld meets with James Baker, chairman of the Reagan for President committee (L) and Carter Campaign Chairman Robert Strauss (R) to work out details for a Carter-Reagan debate.

On August 9, the League's board adopted three criteria by which invitations would be extended. Any candidate invited to participate would have to meet *all three*:

1. **Constitutional eligibility** — Only those candidates who met the requirements of the Constitution of the United States were considered. Article II, Section I requires the President to be a "natural born citizen," at least 35 years of age, and a resident within the United States for at least 14 years.
2. **Ballot access** — A presidential candidate had to be on the ballot in enough states to have a mathematical possibility of winning the election, namely, a majority of votes (270) in the Electoral College.
3. **Demonstrated significant voter interest and support** — A candidate could demonstrate significant voter interest and support in one of two ways: nomination by major party; or, for minor-party and independent candidates, nationwide public opinion polls would be considered as an indicator of voter interest and support. Those candidates who received a level of voter support in the polls of 15 percent or a level of support at least equal to that of a major-party candidate would be invited to participate in the Debates.

The criteria were announced at a press conference in New York City on August 10. The first and second criteria occasioned little comment, but the 15-percent level of support in nationwide public opinion polls created considerable controversy, with the press, the public and the candidates all getting into a mini-debate about the use of polls and the appropriate threshold for deciding who should be invited to debate.

Some, including pollsters, questioned the use of polling data to measure significant voter support, since polls are subject to

sampling error and variation in techniques. The League acknowledged the fact that poll data were not perfect, but argued that polls were the best objective measure available for determining how much voter interest and support a nonmajor party candidate had at a given point in the course of the campaign. And that is what the League had to gauge before extending invitations.

Others criticized either the use of a specific figure or the choice of 15 percent as that figure. Threshold levels ranging between 15 and 25 percent had been discussed by the Advisory Committee. The League's board, after carefully weighing the options, decided that a specific figure, though admittedly arbitrary, would provide the most objective basis for a decision. In settling on the 15-percent figure, the board took into account a number of factors: the records of public opinion polls in previous presidential elections and their relationship to election outcomes; the substantial obstacles faced by nonmajor party candidates; and variations among public opinion polling techniques and the precision of their results. The board concluded that any nonmajor party candidate who, despite the odds such candidates face, received even a 15-percent level of support in the polls should be regarded as a significant force in the election.

The League's board also decided that it was essential to apply the criteria to nonmajor party candidates as close in time to the first Debate as was realistically possible. To allow a sufficient amount of poll data to be gathered between the last major-party convention and the scheduled first Debate, which was targeted for the third week in September, it was clear that the League could not effectively apply the criteria until the second week in September.

At the same August 10 press conference, it was announced that the League would extend

formal invitations to the major-party candidates later that week at the conclusion of the Democratic National Convention. (The Republicans had met in July.)

Realizing that decisions made in early September, while appropriate at that time, might not remain so, the League's board had also determined that it was essential, in order to be faithful to the purposes of the Debates, to reserve "the right to reassess participation of nonmajor party candidates in the event of significant changes in circumstances during the debate period." League President Ruth J. Hinerfeld gave clear notice at the August 10 press conference that the board would review such candidates' standings before subsequent debates in light of the established criteria, then extend or withhold invitations accordingly.

The establishment of the criteria cleared the way for the League to invite candidates to debate.

The Politics of Debating

By the summer of 1980, as the League was ready to extend invitations to the major-party candidates, the public commitments those candidates had made in the spring to participate in League-sponsored Debates had begun to waver. The political climate had changed. John Anderson's Independent candidacy had gained momentum and had become a force to be reckoned with by both the candidates and the League.

On August 19, a week after the Democrats nominated Jimmy Carter as their standard bearer in 1980 (Ronald Reagan had already been nominated by the Republican Party), the League formally invited Jimmy Carter and Ronald Reagan to participate in a series of three Presidential Debates — the final date

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sites and formats to be worked out at a later time.

By late August, neither candidate had said yes to the League's invitation. Starting on August 26, the League began to meet with their representatives in joint session to discuss the whole debate package, including the number of debates, dates, sites and formats, and to secure an agreement from both candidates to debate. Carter strategists wanted earlier debates; Reagan strategists wanted later debates; Carter representatives wanted more debates. Reagan representatives wanted fewer debates. All these specifics were put on the table for discussion — none of the differences seemed insurmountable. Yet at the end of this meeting neither side made a commitment to debate — each was waiting to see whether John Anderson would be included.

On September 9, after reviewing data from five different polling organizations, in consultation with three polling experts (not involved in the polls being used), the League announced that John Anderson met its criteria, and he was immediately invited to participate in a three-way Debate in Baltimore on September 21.* He accepted immediately, as did Ronald Reagan. Jimmy Carter announced that he would participate in a three-way Debate only after a two-way Debate with Ronald Reagan. Having established its criteria and having invited John Anderson, the League would not agree to Carter's proposal.

Following the September 9 decision, the

*The five polling organizations whose data the League examined were: Louis Harris Associates, the Los Angeles Times, the Roper Organization, NBC/Associated Press and the Gallup Poll. The three polling experts consulted by the League were: Mervin Field, Chairman of the Board of the Field Research Corporation; Lester R. Frankel, Executive Vice-President of Audits and Surveys, Inc.; and Dr. Herbert Abelson, Chairman of the Board of Response Analysis Corporation.

League set up meetings with the candidates' representatives to reach agreement on the details of the first Debate, scheduled for September 21. All aspects of this first Debate in Baltimore were agreed upon by Reagan and Anderson representatives. Carter had still not agreed to debate.

The invitation to debate remained open to Jimmy Carter, and the League indicated that a third podium would be held in readiness for him at the Baltimore Debate in the hope that he would be present. For several days, the possibility of a third podium or "empty chair" was the source of considerable speculation in the press and a favorite topic for political cartoonists. However, when it became apparent that Jimmy Carter would not change his mind about participating in a three-way Debate, the League announced that there would be no "empty chair" in Baltimore. The first 1980 League-sponsored Debate took place September 21 as scheduled, but only Reagan and Anderson took part. (See Appendix B for details on 1980 Debates.)

In sponsoring the Baltimore Debate, the League had held firm to its plan to invite all significant candidates to debate and had not agreed to Carter's condition that he would appear in a three-way Debate only after debating Ronald Reagan one-on-one. However, the League also recognized that the Baltimore Debate had failed to meet its goal of giving voters an opportunity to see and hear all of the significant presidential candidates at the same time. In the same place, under the same conditions. Unfortunately, prospects for a three-way Debate did not improve after September 21. With Carter's terms unchanged and with Anderson still showing enough support in the polls to meet the League's criteria for participation, it appeared there might be no further debates.

Yet it was becoming increasingly clear that the public wanted more debates. The League

was caught between the "irresistible force" of voter demand and the "immovable object" of Carter's demand. In an effort to break the stalemate, the League called all three candidates' representatives shortly after the Baltimore Debate and put forward a new package. The League now offered a two-way Debate between Carter and Reagan tied to a three-way Debate among Carter, Reagan and Anderson. This time Carter and Anderson accepted, but Reagan rejected the plan.

At the same time the League made this offer, it also invited all three vice-presidential candidates to participate in a Debate in Louisville, Kentucky. Democrat Walter Mondale said yes, Independent Patrick Lucey said yes, but Republican George Bush said no. When Bush said no, Mondale then declined the League invitation, and the vice-presidential debate was cancelled.

The presidential series also appeared doomed. The League withdrew its proposal when no agreement could be reached, and there seemed very little hope of working out any future agreement. In the next few weeks, however, several developments helped to break the stalemate. Voter interest in a debate between the major-party candidates continued to build, as evidenced by major national public opinion polls released during that period. Editorials and columns appeared in some of the nation's leading newspapers and magazines calling on Jimmy Carter and Ronald Reagan to debate one-on-one.

During this same period, the polls also showed that John Anderson's support was eroding. In mid-October, in keeping with the policy established when the criteria were announced, the League's board reviewed his eligibility for participation. The board examined the results of five national polls taken between September 27 and October 16, conducted by the same polling organizations whose results the League had examined in



LWFEP officials brief the journalists who formed the panel of questioners for the debate in Baltimore between Ronald Reagan and John Anderson.

making its early September decision. Four of these five polls showed John Anderson's level of support below 15 percent, clearly below the levels of support he received in those same polls in early September. In consultation with the same three polling experts with whom it had conferred earlier, the League's board determined that John Anderson no longer met the League's criteria. The League then — on October 17 — invited Jimmy Carter and Ronald Reagan to debate in Cleveland, Ohio on October 28. Both candidates accepted the invitation.

The scenario was very different from that first envisioned by the League. As originally planned, a debate so late in the campaign would have been the last in a series of three, a series that would have offered the possibility of varying the subject matter and format. Now, the two main contenders would have only one chance to face one another. October 28 had become transformed from one in a series of opportunities for candidates and voters to deal thoughtfully with the issues into a winner-take-all event.

With such high stakes, planning for the actual Debate was a delicate process. Candidates' representatives were concerned about audience size, color of backdrop, the place-

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ment of still photographs in the hall, etc. But the format was of greatest concern.

For the very reason that the Cleveland Debate would now be the only one between the two major-party candidates, the League urged a format that would produce the freest possible exchange on the broadest possible range of campaign issues — namely, using only a moderator to direct the flow of exchange between the two candidates. It was a format that had worked exceptionally well in the second of the 1980 League-sponsored Forums in Chicago.

For exactly the same reason — that it was to be the only Debate between Carter and Reagan — this format was not acceptable to either candidate. With the stakes so high, neither was willing to take his chances on such a free-flowing format. Both insisted on a more predictable exchange, using a moderator and panelists as in the 1960 and 1976 debates.

The League, like many viewers and press critics, was far from satisfied with either this format or that of the September Debate. The fact was, however, that the candidates' representatives insisted on the "modified press conference" format of both Debates, negotiated to the minutest detail. It was that or nothing.

Closely allied to the format issue was that of panel selection. The League had developed a roster of 100 journalists from which the moderators and panelists for both Debates were finally drawn. League staff conducted an exhaustive search through consultation with professional media associations, producers of major news analysis shows and editors and news directors representing minority media. Particular attention was given to the journalists' areas of expertise and their reputation for fair and objective reporting of the issues.

The final selections were made by the League in consultation with the co-chairs of

The Le:

When the League announced in November 1979 its intention to sponsor a series of Presidential Forums and Debates, it was in the midst of a prolonged struggle over funding sources and the structure of federal candidate debates with the Federal Election Commission (FEC), the agency set up to regulate federal elections under the Federal Election Campaign Act (FECA). The provisions of that act made it unlawful for any corporation or union "to make a contribution or expenditure in connection with an election to any political office...." In 1979, while the LWVEP was planning the 1980 Presidential Forums, the FEC informed the League that corporate and union funds to finance the Forums would be prohibited as long as such contributions "not have the effect of supporting or opposing particular parties or candidates." But after the LWVEP had already conducted its forums series partly financed by corporate and union contributions, the FEC issued a policy statement barring 501(c)(3) organizations such as the LWVEP from accepting corporate or union donations to defray the costs of such events as debates. The FEC admitted that corporate and union donations to the LWVEP were not political contributions or expenditures under FECA's definition of those terms, but the agency said that the LWVEP's expenses were nevertheless "bursements 'in connection with' an election and therefore could not come from corporate or union sources.

The 1976 decision, which was made in advance of the League-sponsored Forums and Debates, had a devastating effect on the

and the FEC: Financing the Debates

plans to fund these Presidential Debates. Forced to rely solely on contributions from individuals and unincorporated organizations, the League was unable to raise enough money to cover the full cost of the 1976 Debates.

On February 11, 1977, convinced that Presidential Debates were an important educational service to the public, and fearing the FEC decision would have an impact on state and local League-sponsored candidate events, the League of Women Voters of the United States, the League of Women Voters Education Fund and the League of Women Voters of Los Angeles sued the FEC, challenging its decision to prohibit the LWVEF from accepting corporate and union money.

As a result of the lawsuit and FEC public hearings on the importance of debates to an informed electorate, the FEC cancelled its earlier decision and agreed to begin the process of writing regulations that would clarify issues of debate funding and sponsorship. The League did not believe that any regulations in this area were necessary but saw them as a way to remove the chilling effect of the FEC's prior action on potential corporate donors.

The process of setting those regulations took almost three years. In order to guarantee nonpartisanship, the FEC formulated regulations limiting sponsors of debates to those who might reasonably be expected to act in a nonpartisan manner and by establishing strict rules as to who might be invited to participate in the debate.

The agency's first attempt at regulation was vetoed by the Senate in September 1979.

Thus the FEC began the rulemaking process again and developed a regulation that took effect on April 1, 1980, barely in time for the League to undertake the massive fundraising necessary to sponsor the 1980 Presidential Debates. This regulation broadened sponsorship of debates to 501 (c)(3) and 501 (c)(4) organizations that did not endorse, support or oppose political candidates or parties. It also allowed bona fide broadcasters and the print media to spend corporate money to stage debates. It left to the discretion of the sponsor the method by which candidates were chosen to participate. The FEC stated that debates are required to be nonpartisan and left it up to the sponsor as to how that was to be achieved.

As soon as the new regulation went into effect, the League began to raise money from corporations for the 1980 Presidential Debates. A breakthrough in securing the necessary amount of funding came when six major corporations each contributed \$50,000. (See inside front cover for list of corporate contributors.) (The largest single contribution in the history of the LWVEF's Debates project was a gift of \$250,000 from the Charles Benton Foundation in 1976, made before the 1976 FEC ruling.)

In all, the League raised and spent nearly \$700,000 for the 1980 Presidential Forums and Debates, which could not have taken place without the generous contributions of the corporations and individuals involved. This \$700,000 was greatly augmented by the value of volunteer hours — particularly those of League members in Baltimore, Louisville, Portland and Cleveland — making the Debates far more than a million dollar effort.

the Advisory Committee, Carla Hills and Newton Minow, after they discussed the pool of journalists with the candidates' representatives.

The League preferred to keep the candidates' representatives entirely out of the panel selection process. However, because of the tremendous significance of the Cleveland Debate, the candidates' representatives insisted on being involved in almost every decision — large and small.

A Look Back... and a Look Ahead

Scholars Steven Chaffee and Jack Dennis write that while many questions about debates need more study and research, one conclusion drawn from studies of the 1960 and 1976 presidential debates is that "the debates make substantial contributions to the process of democracy and perhaps even to the longer-term viability of the system. The research offers a great deal of support for the proposition that the debates serve important informational functions for voters."¹ They enable the voter to weigh the alternatives being proposed by each candidate, and "as an information-gathering device they have the unique virtue of allowing a simultaneous consideration of the alternatives,"² without which the voter is forced to gather information from "a large series of such discontinuous, one-sided presentations as advertisements, news reports of speeches, and party conventions."³

When scholars, historians and political ob-

The Past and Future of Presidential Debates, Austin Ranney, Ed. "Presidential Debates: An Empirical Assessment" by Steven H. Chaffee and Jack Dennis, 1979, American Enterprise Institute, p. 98.

²Ibid., p. 99.

³Ibid., p. 99.

servers write the definitive history of the Presidential Debates, how will they be viewed? What contributions did they make toward the democratic system of government? How will the League's experience as sponsor — both successes and its failures — serve to improve the quality of debates in the future?

Although it is too early to achieve an historical perspective, it is possible to make some telling observations about the significance of the 1980 Presidential Debates and the lessons to be learned. The nature and quality of the 1984 presidential campaign — a fast-approaching event — will be affected by how constructively we use the intervening time to evaluate the 1980 Presidential Debates in order to build a better one in 1984.

Presidential Debates in 1984? Yes. Presidential Debates every four years are now becoming the norm: never before have we had debates in consecutive presidential elections. This nascent tradition, together with voters' heightened sense of entitlement — a right to see and hear presidential candidates debate the issues at the same time, in the same place and under the same conditions — will weigh heavily against the reluctance of future candidates to participate.

But even if the weight of voter expectation overrides the resistance of major-party candidates, the complex problems surrounding the participation of minor-party and independent candidates remain. In a 1979 report, the 20th Century Fund Task Force on Televised Presidential Debates called this "the single most difficult issue confronting Presidential Debates." (The 20th Century Fund is an independent research foundation that studies economic, political and social institutions and issues.) In 1980, the League tackled the issue with its eligibility criteria. That approach will be a starting point for all future efforts to set rules for debate participation.

Backstage at the Debates

In 1975, the Federal Communications Commission ruled that debates could be exempt from the "equal time" restrictions of Section 315 of the Communications Act of 1934 if sponsorship was independent of both broadcasters and candidates and the debates could be classified as bona fide news events. Thus, in 1976 and 1980, the League served as the independent sponsor of the Debates, which were covered by the broadcast media as news events.

In 1980:

- 45.8 million households, approximately 120 million viewers, in the United States watched the Carter-Reagan Debate.
- 1,204 members of the media were present in Baltimore to cover the Anderson-Reagan Debate; 1,632 media representatives were in Cleveland to cover the Carter-Reagan Debate. This included still photographers and print, TV, radio and foreign journalists.
- The Voice of America broadcast the Debates live or tape-delayed in English to a worldwide listening audience. VOA's 39 language services used excerpts of the Debates in translation for newscasts. The Debates were broadcast live in Spanish to all of Latin America.

The League itself gives the 1980 Presidential Debates experience mixed reviews. It takes pride in the history-making nature of its efforts. And it takes pride in adhering to its main goal. The League's persistence *did* enable American voters, in record-breaking numbers, to hear significant presidential candidates debating the issues. It met an unquestionable "consumer demand": an October 1980 national public opinion poll found that 73 percent of the people surveyed wanted such debates. Voters had two opportunities to make side-by-side comparisons of candidates and their positions on the issues. In an election characterized by slick candidate packages — 30- and 60-second radio and television advertisements and canned speeches — the League Debates gave the voters the solid information they needed to help them cast an informed vote.

Yet despite the clear demand from voters for this service, the 1980 Presidential Debates were in constant jeopardy. League plans for a comprehensive series of four Debates — three among presidential candidates and one

among their running mates — had to be abandoned; a three-way Debate never took place; and because the major-party candidate met only once, that Debate took on all the burdens of a "winner-take-all" event. Issues concerning structure and format were negotiated to the minutest detail. Candidates were unwilling to try new formats, and they threatened to walk away from debating at many turns if they did not get what they wanted.

These difficulties faced by the League in 1980 will be facing the League or any other debates sponsor in the future. Whenever a major candidate sees disadvantages in sharing a platform with an opponent, a debate may not take place. And whenever the smallest feat of the plan seems disadvantageous, the threat to walk away can hold the effort hostage. To ensure that improved debates become a regular part of every presidential election, and to examine and improve the political communications process (how candidates communicate to voters their stands on issues — the LWVEP has embarked on a three-year



Above, LWVP Chair Ruth J. Hinzfeld briefs the press the day before the Cleveland debate between Jimmy Carter and Ronald Reagan.

project leading up to the 1984 presidential election. The League will reach out to the 73 percent of Americans who have said they are in favor of debates through their various organizations, institutions and as individuals.

The purpose of this effort is to raise issues about the ways in which candidates communicate with the electorate, and to educate the public about debates and the whole political communication process. The events will include town meetings, opinion leader gatherings and hearings among others. Above all, this project will identify and mobilize the debates constituency so that the constituency can demand of future candidates that they face each other and the public in an open exchange of ideas.

The League's primary goal is to see that presidential debates occur in 1984 and in the future, and that the debates process continue to be improved. The League's experience as a sponsor of Presidential Debates in 1976 and 1980, combined with the long tradition of state and local League-sponsored candidate events, places the organization in an ideal position to ensure that this happens.

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Appendix A 1980 Presidential Forums*

First Presidential Forum

Wednesday, February 20, 1980

8:30-10:00 p.m. EST

Manchester, New Hampshire

Moderator: Howard K. Smith, broadcast
journalist

Panelists: Joseph Kraft, syndicated
columnist
Eileen Shanahan, managing
editor, *Washington Star*

Candidates: Representative John Anderson
Senator Howard Baker
Ambassador George Bush
Governor John Connally
Representative Philip Crane
Senator Robert Dole
Governor Ronald Reagan

Format: Part I. Seven questions were
posed. The candidate to
whom a question was first
addressed had two minutes to
respond; the other six candi-
dates each had one minute to
respond. Total: 1 hour.

Part II. Individuals from the
audience directed their ques-
tions to a specific candidate
who was given one and one-
half minutes to respond. Total:
23 minutes.

Part III. Each candidate was
given one minute to make a
closing statement. Total: 7
minutes.

*Questions for each forum could cover any
subject.

Second Presidential Forum

Thursday, March 13, 1980

8:00-9:30 p.m. CST

Chicago, Illinois

Moderator: Howard K. Smith

Candidates: Representative John Anderson
Ambassador George Bush
Representative Philip Crane
Governor Ronald Reagan

Format: Part I. The moderator di-
rected questions to specific
candidates; after the initial re-
sponse, all the candidates
were free to participate in a
discussion of the issue. Total:
90 minutes.

Part II. Individuals from the
audience asked questions; the
format for response was the
same as in Part I. Total: 26
minutes.

Part III. Each candidate was
allotted one minute for a clos-
ing statement. Total: 4 min-
utes.

Third Presidential Forum

Wednesday, April 23, 1980

8:00-9:00 p.m. CST

Houston, Texas

Moderator: Howard K. Smith

Candidates: Ambassador George Bush
Governor Ronald Reagan

Format: Same as in Second Presiden-
tial Forum. Part I: 45 minutes.
Part II: 13 minutes. Part III: 2
minutes.

Appendix B 1980 Presidential Debates*

First Presidential Debate

Sunday, September 21, 1980
10:00-11:00 p.m. EST
Baltimore, Maryland

Moderator: Bill Moyers, public television commentator/producer
Panelists: Charles Corddry, reporter, *Baltimore Sun*
Soma Golden, editorial writer, *New York Times*
Daniel Greenberg, syndicated columnist
Carol Loomis, board of editors, *Fortune* magazine
Lee May, reporter, *Los Angeles Times*
Jane Bryant Quinn, columnist, *Newsweek* magazine

Candidates: Representative John Anderson
Governor Ronald Reagan

Format: Each panelist asked one question. Each candidate was given two and one-half minutes to respond; then each had an additional one minute 15 seconds to challenge the other's response. Each candidate was allotted three minutes for a closing statement. Total: one hour.

*Questions for each debate could cover any subject.

Second Presidential Debate

Tuesday, October 28, 1980
9:30-11:00 p.m. EST
Cleveland, Ohio

Moderator: Howard K. Smith
Panelists: Harry Ellis, Washington staff correspondent, *Christian Science Monitor*
William Hilliard, assistant managing editor, *Portland Oregonian*
Marvin Stone, editor, *U.S. News and World Report*
Barbara Walters, correspondent, ABC News

Candidates: President Jimmy Carter
Governor Ronald Reagan

Format: Part I. Each panelist directed one question to a candidate who was given two minutes to respond. The panelist then asked a follow-up question, and the candidate had one minute to respond. The same question was directed to the other candidate, who had the same opportunity to respond to that question and a follow-up question. Each candidate was then given one minute to challenge the other's response. Total: 40 minutes.
Part II. Each panelist asked one question to which each candidate had two minutes to respond. Each candidate was then given one and one-half minutes for a rebuttal. Each had one minute for a summation. Total: 40 minutes.
Part III. Each candidate had three minutes for a closing statement. Total: 6 minutes.

Appendix C

Public Advisory Committee*

Carla Hills, Co-Chair
Robert Anderson
Jerry Apodaca
James David Barber
Charles Benton
Shirley Temple Black
Douglass Cater
Sol Chalkin
Archibald Cox
Lee Hanna
Dorothy Helght
Harriet Hentges
Ruth J. Hinerfeld

Newton Minow, Co-Chair
Benjamin Hooks
Pat Hutar
Jim Karayn
Jewel Lafontant
Lee Mitchell
Austin Ranney
Sharon Percy Rockefeller
Carmen Delgado Votaw
Paul Wagner
Charls Walker
Caspar Weinberger

Bill Brock, Chairman
Republican National Committee

Ex-officio
John White, Chairman
Democratic National Committee

*When the Advisory Committee was formed, Anne Armstrong served as one of the co-chair. She resigned on July 2, 1980 to play a major role in the Republican presidential campaign. She was succeeded as co-chair by Carla Hills.

EXHIBIT 3

17044411803

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates

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MUR 5414

DECLARATION OF ALAN K. SIMPSON

I, Alan K. Simpson, give this declaration based on personal knowledge as follows:

1. I am a member of the Board of Directors of the Commission on Presidential Debates ("CPD"). I serve on the Board because I have always supported the CPD's efforts to ensure that the public has the remarkable opportunity, during the final weeks of the general election campaign, to view debates among the individuals who have emerged as the leading candidates for the offices of President and Vice President of the United States.

2. I am aware of the Complaint against the CPD, filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. I understand that the Complaint includes the following passage:

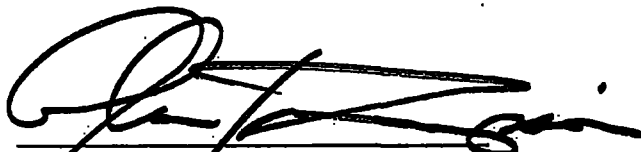
CPD director Alan Simpson said, "You have a lot of thoughtful Democrats and Republicans on the commission that are interested in the American people finding out more about the two major candidates -- not about independent candidates, who mess things up." When asked if third-party or independent candidates should be included in the presidential debates, Simpson said, "No . . . I think it's obvious that independent candidates mess things up." (Ellipses indicating omitted words in original)

3. Mr. Farah cites an interview he conducted with me on March 18, 2002 as his source for these quotes. I have no recollection of this interview from two years ago -- I do many per month -- but it is entirely possible that it took place. I am most assuredly certain, however, that I was not told that the purpose of any such interview was to press a claim against the CPD.

Although the "quote" itself indicates that some words have been omitted by Mr. Farah, I certainly have no present way of knowing what words have been omitted.

4. I do know that the statements Mr. Farah attributes to me in the Complaint do not fairly or fully reflect my views with respect to the participation of nonmajor party candidates in debates sponsored by the CPD. I believe that the CPD's debates should include the leading candidates for president and vice-president, regardless of party affiliation. However, I do not believe the CPD's general election debates should include candidates who have only marginal national electoral support. The CPD thoughtfully adopted nonpartisan candidate selection criteria solely designed to identify those candidates who have achieved a level of electoral support enabling them to realistically be considered among the principal rivals for president and vice president. I believe that the CPD's criteria are a careful, reasonable and appropriate approach to ensure that the leading candidates, regardless of party affiliation, are invited to participate in the CPD's debates.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of March, 2004.



ALAN K. SIMPSON

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates

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MUR 5414

DECLARATION OF NEWTON MINOW

I, Newton Minow, give this declaration based on personal knowledge as follows:

1. I am presently a member of the Board of Directors of the Commission on Presidential Debates ("CPD"). I have served as a Director since 1993.
2. I am aware of the Complaint against the CPD, filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. I understand that the Complaint includes the following quote from an Op-Ed article I co-authored in 1984 and which appeared in the *New York Times*:

Because debates are political events, responsibility for them should rest with the political system—with the Democratic and Republican Parties . . . Although entrusting such debates to the major parties is likely to exclude independent and minor party candidates, this approach is consistent with the two-party system. Moreover, if the Democratic and Republican nominees agreed, other candidates could be included.

3. Mr. Farah introduces this quote with the following sentence: "The CPD directors believe in a two-party system, and most are contemptuous of third-party and independent candidates." Open Debates Complaint at 6.

4. To my knowledge I have never spoken with Mr. Farah and he most assuredly has not accurately represented my views.

5. Contrary to the paradigm addressed in my 1984 article, the CPD, as it has actually operated, is an independent non-profit organization, which receives no funding from any political

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party. No official from the major parties holds any office or position whatsoever with the CPD, and the CPD is not in any sense, directly or indirectly, controlled by the major parties.

6. In the eleven years that I have been on the CPD Board -- and therefore have direct knowledge -- the CPD has at all times conducted itself in a non-partisan manner, including in its adoption and application of criteria to determine candidate eligibility to participate in debates hosted by the CPD. During my tenure on the Board of the CPD, all candidate selection decisions have been made based on a good faith application of the CPD's published non-partisan candidate selection criteria. I am not aware of any decision by the CPD concerning candidate eligibility to participate in the debates that was controlled or directed by the major parties or their nominees, as is alleged in the Open Debates complaint.

7. I serve on the Board because I support the CPD's efforts to ensure that the public has the opportunity, during the final weeks of the general election campaign, to view debates among the individuals who have emerged as the leading candidates for the offices of President and Vice President of the United States. I believe that the CPD's debates should include the leading candidates for president and vice-president, regardless of party affiliation.

8. I do not believe, however, that the CPD's general election debates should include candidates who have only marginal national electoral support. The CPD, after careful deliberation and study, has adopted nonpartisan candidate selection criteria designed to identify those candidates who have achieved a level of electoral support enabling them to realistically be considered among the principal rivals for president and vice president. I believe that the CPD's criteria are a careful, reasonable and appropriate approach to ensure that the leading candidates, regardless of party affiliation, are invited to participate in the CPD's debates.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22ND
day of March, 2004.

Newton Minow
NEWTON MINOW

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates

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MUR 5414

DECLARATION OF BARBARA VUCANOVICH

I, Barbara Vucanovich, give this declaration based on personal knowledge as follows:

1. I served as a member of the Board of Directors of the Commission on Presidential Debates ("CPD") from February 1987 to April 1997. I currently have no affiliation with the CPD.

2. I support the CPD's efforts to ensure that the public has an opportunity, during the final weeks of the general election campaign, to view debates among those individuals, regardless of their party affiliation, who have emerged as the leading candidates for the Offices of President and Vice President of the United States.

2. I am aware of the complaint against the CPD filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. The complaint includes the following sentence: "Barbara Vucanovich, a former CPD Director, praised Executive Director Janet Brown, for being 'extremely careful to be bi-partisan.'" Mr. Farah cites an interview he conducted with me on July 23, 2001 as the source for this quote. The complaint relies on this partial quote to support the contention that the CPD is not "nonpartisan" but rather is "bipartisan."

3. I remember being interviewed by Mr. Farah. He specifically represented to me that he was a reporter. He did not mention that the purpose of the interview was to press a claim against the CPD.

4. The quote attributed to me, as it is used in the complaint, does not fully or fairly reflect my views of the CPD or the manner in which it has operated. I used the word "bi-partisan," as many do, to mean not favoring any one party over another. It was not intended in the sense Mr. Farah has used it in the complaint.

5. It is my firm belief that the CPD has at all times conducted itself in a non-partisan manner, including in its adoption and application of criteria to determine candidate eligibility to participate in debates hosted by the CPD. During my tenure on the Board of the CPD, all candidate selection decisions were made based on a good faith application of the CPD's published non-partisan candidate selection criteria. I am not aware that any decision by the CPD concerning candidate eligibility to participate in the debates was controlled or directed by the major parties, as is alleged in the Open Debates complaint.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of March, 2004.

Barbara J. Vucanovich
BARBARA VUCANOVICH

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

The Commission on Presidential Debates)

MUR 5414

DECLARATION OF JOHN LEWIS

I, John Lewis, give this declaration based on personal knowledge as follows:

1. I served as a member of the Board of Directors of the Commission on Presidential Debates ("CPD") for the period from 1994 to 1998. I served on the Board because I support the CPD's efforts to ensure that the public has the opportunity, during the final weeks of the general election campaign, to view debates among the individuals who have emerged as the leading candidates for the offices of President and Vice President of the United States.

2. I am aware of the Complaint against the CPD, filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. I understand that the Complaint includes the following quote attributed to me:

There's no question that having the two major parties in absolute control of the presidential debate process, and there's no question that they do, strengthens the two-party system. These are the most important events of an election, and if no other candidates are getting in the debates, the American people are just not going to hear about them, which means the two parties basically have a monopoly.

3. Mr. Farah cites an interview he conducted with me on September 17, 2002 as his source for this quote. I have no recollection of this interview from two years ago, but it is entirely possible that it took place. I am certain, however, that I was not told that the purpose of any such interview was to press a claim against the CPD.

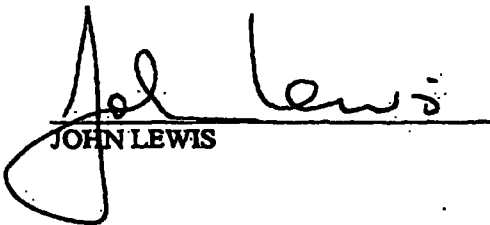
4. Mr. Farah relies on the above quote attributed to me to support his thesis that the major parties control the CPD and that the CPD is "bipartisan" rather than "nonpartisan." Mr. Farah has not represented my views fully or fairly. While, as noted, I do not remember the interview with Mr. Farah, it is interesting that the quote he attributes to me does not say that the major parties control the CPD.

5. I believe that the CPD's debates should include the leading candidates for president and vice-president, regardless of party affiliation. However, I do not believe the CPD's general election debates should include candidates who have only marginal national electoral support. The CPD has adopted nonpartisan candidate selection criteria designed to identify those candidates who have achieved a level of electoral support enabling them realistically to be considered among the principal rivals for president and vice president. I believe that the CPD's criteria are a careful, reasonable and appropriate approach to ensure that the leading candidates, regardless of party affiliation, are invited to participate in the CPD's debates.

6. During my tenure on the Board of the CPD, candidate selection decisions were made based on a good faith application of the CPD's published non-partisan candidate selection criteria. I am not aware that any decision by the CPD concerning candidate eligibility to participate in the debates was controlled or directed by the major parties, as is alleged in the Open Debates complaint.

I declare under penalty of perjury that the foregoing is true and correct.

Executed his 17 day of March, 2004.


JOHN LEWIS

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates

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MUR 5414

DECLARATION OF DAVID NORCROSS

I, David Norcross, give this declaration based on personal knowledge as follows:

1. I served as a member of the Board of Directors of the Commission on Presidential Debates ("CPD") from 1987 to 1993. I do not presently serve on the Board or hold any other position with the CPD. I have not held official position with the CPD for over a decade and have no direct knowledge concerning its operations since I left the Board.

2. I am aware of the Complaint against the CPD, filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. I understand that the Complaint includes and attributes to me the following quote regarding the CPD: "It's really not nonpartisan. It's bipartisan."

3. Mr. Farah cites an interview he conducted with me on March 26, 2001 as his source for this quote. I recall doing the interview. Mr. Farah did not tell me that the purpose of the interview was to press a claim against the CPD.

4. I am aware that Mr. Farah has used the comments he attributes to me as part of his effort to advance the claim that the CPD supports the major party nominees and opposes the candidacies of nonmajor party candidates and, therefore, is bipartisan rather than nonpartisan. Mr. Farah has not fully or fairly represented my views.

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5. In the years that I served on the CPD Board -- and therefore have direct knowledge -- the Board made considerable efforts to deal fairly with third-party candidates and adopted and applied nonpartisan criteria to determine candidate eligibility to participate in debates hosted by the CPD. During my tenure on the Board of the CPD, all candidate selection decisions were made based on a good faith application of the CPD's published nonpartisan candidate selection criteria. I am not aware of any decision by the CPD concerning candidate eligibility to participate in the debates that was controlled or directed by the major parties or their nominees, as is alleged in the Open Debates complaint.

6. I served on the CPD Board because I support the CPD's efforts to ensure that the public has the opportunity, during the final weeks of the general election campaign, to view debates among the individuals who have emerged as the leading candidates for the offices of President and Vice President of the United States. I believe that the CPD's debates should include the leading candidates for president and vice-president, regardless of party affiliation.

7. I do not believe, however, that the CPD's general election debates should include candidates who have only marginal national electoral support. During the time I served on the Board, the CPD, after careful deliberation and study, adopted nonpartisan candidate selection criteria designed to identify those candidates who had achieved a level of electoral support enabling them realistically to be considered among the principal rivals for president and vice president. The CPD's criteria in place while I was on the Board represented a careful, reasonable and appropriate approach to ensure that the leading candidates, regardless of party affiliation, were invited to participate in the CPD's debates.

I declare under penalty of perjury that the foregoing is true and correct. Executed this _____

day of March, 2004.


DAVID NORCROSS

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EXHIBIT 4

17044411816

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	MUR 6869R & 6942R
The Commission on Presidential Debates, et al.	Supplemental Declaration of Janet H. Brown

I, Janet H. Brown, Executive Director of the Commission on Presidential Debates ("CPD"), give this declaration based on personal knowledge.

Background

1. I have been the Executive Director of the CPD since March 1987. Under the supervision of the Board of Directors, I was primarily responsible for planning and organizing the debates that the CPD sponsored in 2016, as I have been in each presidential election year since 1988.

2. I executed a Declaration in Support of the CPD's Opposition to the Complaint in MURs 6869 & 6942. I understand that my December 12, 2014 Declaration is now part of the record in MURs 6869R & 6942R. I incorporate my December 12, 2014 Declaration herein. I submit this supplemental Declaration in opposition to the Complaint in MURs 6869R & 6942R.

The CPD's Board of Directors

3. The composition of the CPD's Board of Directors ("Board") has changed since I submitted my last declaration. The all-volunteer Board is now led by Co-Chairs Frank J. Fahrenkopf, Jr. and Dorothy S. Ridings, both of whom are distinguished civic leaders with extensive records of public service. Ms. Ridings, who has served on the CPD Board since 1997, was elected Co-Chair in December 2016. Ms. Ridings served as President of the League of Women Voters of the United States from 1982-1986.

4. In addition to Co-Chairs Fahrenkopf and Ridings, the current members of the CPD Board are:

Howard G. Buffett, *Chairman and CEO, The Howard G. Buffett Foundation*

John C. Danforth, *Former U. S. Senator and currently Partner, Dowd Bennett*

Charles Gibson, *Former Anchor, ABC World News with Charles Gibson*

John Griffen, *Managing Director, Allen & Company LLC*

Jane Harman, *Director, President and CEO, Woodrow Wilson International Center for Scholars*

Antonia Hernandez, *President and CEO, California Community Foundation*

Reverend John I. Jenkins, *President, University of Notre Dame*

Jim Lehrer, *Former Executive Editor and Anchor, PBS NewsHour*

Michael D. McCurry, *Former White House Press Secretary and currently Distinguished Professor of Theology, Wesley Theological Seminary*

Newton N. Minow, *Former FCC Chair and currently Senior Counsel, Sidley Austin*

Richard D. Parsons, *Senior Advisor, Providence Equity Partners LLC*

Olympia Snowe, *Former U.S. Senator*

5. It remains true that no CPD Board member has held any position with one of the major parties since 1989, and it remains true that CPD receives no funding from any political party, candidate or government. CPD operates completely independently of any party or political campaign. It alone makes its decisions concerning candidate selection criteria, number of debates, debate sites, debate format, and debate moderators.

6. It has long been the informal policy of the CPD that Board members are to refrain from serving in any official capacity with a political campaign or party while serving on the Board.

7. In October 2015, CPD expanded this policy by adopting a formal Political Activities Policy that reflects CPD's view that a debate staging organization better serves the public when it not only conducts its operations in a strictly nonpartisan manner, but when it also adopts and

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adheres to balanced policies designed to prevent even the potential for an erroneous appearance of partisanship based on political activities undertaken by CPD-affiliated persons (including Board members) in a personal capacity. The CPD policy is intended to deter CPD-affiliated persons from participating, even in a personal capacity, in the political process at the presidential level (including the making of campaign contributions) while serving on the Board, despite the fact no such policy is required by FEC regulations. That written policy also reaffirms what has always been CPD's policy: Each and every CPD-affiliated person shall perform his or her duties in connection with CPD in a strictly nonpartisan fashion.

The 2016 Presidential Debates

8. Before each debate cycle, CPD has reviewed its then-existing candidate selection criteria to determine if changes should be made to those criteria. This effort was particularly robust before the 2016 debates and included, *inter alia*, an extended period of soliciting and reviewing online comments and suggestions and the formation of a special Working Group of CPD Board members to study the candidate selection criteria review. The Working Group, which was chaired by former League of Women Voters President Dorothy Ridings, reviewed the CPD's historical approach to candidate selection criteria; the pertinent legal and regulatory framework; historical data regarding polling results, election results, and ballot access; historical and current proposals regarding candidate selection criteria; and the comments that the CPD received on its website in response to its eight-week long solicitation of proposals.

9. After careful evaluation, the Working Group, and then the full Board, concluded that the CPD's streamlined criteria that had been in place since 2000, with minor changes, remained the best approach to candidate selection criteria. The Board concluded that CPD's voter education mission is best served by pre-established, objective, and transparent candidate selection criteria which identify those individuals whose public support in the final weeks of a

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campaign places them among the leading candidates in the presidential race. The Board also determined, as the Co-Chairs explained in the CPD's October 29, 2015 Press Release, that "[i]t is appropriate for a debate sponsor to take the campaign as it finds it in the final weeks leading up to Election Day. The CPD's debates are not intended to serve as a springboard for a candidate with only very modest support. Participation in the debates is determined by the level of public support a candidate enjoys as Election Day approaches." See CPD Oct. 29, 2015 Press Release (attached at Tab A).

10. The Board also concluded that high-quality public opinion polling is the most accurate and best available method of measuring public support before Election Day. As a result, the Board adopted the following criteria for the 2016 presidential election candidate debates: (1) constitutional eligibility; (2) appearance on a sufficient number of state ballots to achieve an Electoral College majority; and (3) a level of support of at least 15 percent of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination. See Commission on Presidential Debates' Nonpartisan Candidate Selection Criteria for 2016 General Election Debate Participation, Oct. 29, 2015 Press Release (attached at Tab A).

11. In applying the 15 percent polling criterion in 2016, as it has in each debate cycle since 2000, CPD consulted Dr. Frank Newport, Editor-in-Chief of Gallup, to advise it in the selection of the five polling organizations to be relied upon. Dr. Newport recommended the five polling organizations based on: the reliable frequency of the polling and sample size used by the polling organization; the soundness of the survey methodology employed by the polling organization; and the longevity and reputation of the polling organization. Based on Dr.

Newport's recommendation, the CPD selected the following five polling organizations, which were announced on August 15, 2016: ABC-Washington Post; CBS-New York Times; CNN-Opinion Research Corporation; Fox News; and NBC-Wall Street Journal.

12. On September 16, 2016, the CPD Board met to apply its candidate selection criteria to determine the participants of its first presidential and vice presidential candidate debates. After consulting with Dr. Newport, the Board determined that the polling averages for each of the candidates that met the first two criteria were as follows: Hillary Clinton (43%), Donald Trump (40.4%), Gary Johnson (8.4%) and Jill Stein (3.2%). As a result, the Board invited Hillary Clinton and Donald Trump to participate in the first presidential debate, which took place on September 26, 2016, at Hofstra University in Hempstead, New York. The Board also invited Tim Kaine and Mike Pence to participate in the vice presidential debate, which took place on October 4, 2016, at Longwood University in Farmville, Virginia. See CPD Sept. 16, 2016 Press Release (attached at Tab B).

13. On October 4, 2016, the Board met to apply the candidate selection criteria for the second presidential debate. With the assistance of Dr. Newport, the Board determined that the polling averages called for in the third criterion were as follows: Hillary Clinton (44.8%), Donald Trump (40.8%), Gary Johnson (7.4%) and Jill Stein (2.6%). See CPD Oct. 4, 2016 Press Release (attached at Tab C). The Board invited Hillary Clinton and Donald Trump to the second presidential debate, which took place on October 9, 2016, at Washington University in St. Louis, St. Louis, Missouri.

14. On October 14, 2016, the Board met to apply the candidate selection criteria for the third presidential debate. With the assistance of Dr. Newport, the Board determined that the polling averages for the candidates were as follows: Hillary Clinton (45.8%), Donald Trump

(40.4%), Gary Johnson (7.0%) and Jill Stein (2.2%). See CPD Oct. 14, 2016 Press Release (attached at Tab D). As a result, the Board invited Hillary Clinton and Donald Trump to the third presidential debate, which was held on October 19, 2016, at the University of Nevada in Las Vegas, Nevada.

Additional Points

15. Based on the 2016 actual presidential election results, the polling averages upon which the CPD relied were higher than the actual percentage of the vote achieved by the third party candidates on Election Day. Gary Johnson, whose polling averages ranged between 7 percent and 8.4 percent, finished with approximately 3.3 percent of the popular vote. Jill Stein's polling average ranged between 2.2 and 3.2 percent, and she obtained approximately 1.1 percent of the popular vote. See U.S. Election Atlas, 2016 Presidential Election Results, <http://uselectionatlas.org/RESULTS/national.php>. The major party candidates each received somewhat higher percentages of the vote than they did in the polling averages relied upon by CPD (though the differential between them reflected in the polling averages, an average of 4.0 percent, tracked the differential in the actual vote, 3.9 percent, quite closely). Of course, national polls are not state-by-state polls and do not measure support on an Electoral College basis.

16. In the 2016 election cycle, non-major party candidates in particular had numerous opportunities both before and after the presidential debates to gain exposure to national audiences through various appearances in broadcast, cable, print, and online media. Below, based on a review of information available on the internet, is what I am sure is a partial list of Libertarian and/or Green Party candidate television appearances and print media stories during the 2016 campaign:

- *November 4:* Stein on Fox Business' "Kennedy"
- *November 2:* Bill Weld on MSNBC's "Rachel Maddow" — replayed on Washington Post website
- *Oct. 31 & Nov. 1:* Johnson and Stein on PBS Presidential Forum with Tavis Smiley
- *October 27:* The Guardian online interview with Johnson — replayed on CNN.com — October 28
- *October 24:* Johnson interviewed by ABC's Jordyn Phelps — available online
- *October 19:* Johnson interviewed by Elex Michaelson on ABC7
- *October 16:* Johnson on C-SPAN — 1-hour discussion with Steve Scully
- *October 16:* Stein/Baraka on C-SPAN — 1-hour discussion with Steve Scully
- *September 30:* Stein on Al Jazeera TV's "UpFront"
- *September 28:* MSNBC's "Hardball" with Chris Matthews — Johnson/Weld Town Hall
- *September 26:* Stein on CBSN with Josh Elliott
- *September 25:* Johnson on ABC's "This Week" with George Stephanopoulos
- *September 23:* Johnson on MSNBC's "Morning Joe"
- *September 18:* Johnson gave remarks at Detroit Economic Club (on C-SPAN)
- *September 13:* Johnson/Weld campaign rally in New York (on C-SPAN)
- *September 9:* Stein on WGN-TV Chicago
- *September 8:* Johnson on MSNBC's "Morning Joe" — replayed/discussed on CNN's "New Day", online via Politico, New York Times, Salon, NBC News, The New Yorker, The Hill, CBS News, TIME, Fox News, The Guardian, Mediaite, Washington Post, Bloomberg, Real Clear Politics, Slate, etc.
- *September 8:* Johnson on ABC's "The View"
- *September 7:* Johnson and Weld on "CBS This Morning"
- *September 6:* Johnson campaign rally in Des Moines, Iowa (on C-SPAN)
- *September 6:* Stein campaign rally in Detroit, Michigan (on C-SPAN)
- *September 4:* Stein on "Fox News Sunday" with Chris Wallace
- *August 26:* Johnson/Weld on Fox Business Network Libertarian Town Hall hosted by John Stossel
- *August 23:* Stein news conference at National Press Club (on C-SPAN)
- *August 23:* Stein on "PBS NewsHour" with Judy Woodruff
- *August 18:* Stein interview with USA Today's Susan Page
- *August 17:* Stein/Baraka on CNN Green Party forum with Chris Cuomo
- *August 16:* Johnson addressed Asian American and Pacific Islander Forum (Las Vegas), covered on broadcast, print and online media
- *August 15:* Johnson on C-SPAN's "Newsmakers"
- *August 10:* Stein on BBC News Global
- *August 6:* Stein/Green Party Convention covered on C-SPAN
- *August 5:* Johnson/Weld on MSNBC's "Hardball" with Chris Matthews — up on Libertarian YouTube channel (27 K views)
- *August 5:* Stein on C-SPAN's "Newsmakers"
- *August 4:* Stein on CNBC's "Power Lunch"

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- *August 3:* Johnson/Weld on CNN Libertarian Presidential Town Hall with Anderson Cooper – aired on CNN, CNN International, CNN en Espanol, livestreamed via CNNgo
 - *July 25:* Stein interview with ABC's Jonathan Karl – available online
 - *July 20:* Johnson interviewed by ABC's Amna Nawaz & Devin Dwyer – available online
 - *July 15:* Stein on C-SPAN's "Washington Journal"
 - *July 14:* Stein on MSNBC's "Meet the Press" with Chuck Todd
 - *July 7:* Johnson/Weld gave remarks at National Press Club in DC with NPC Pres. Thomas Burr – covered by C-SPAN and on Press Club website
 - *July 7:* Stein on Fox Business' "Mornings with Maria" (Bartirromo)
 - *July 3:* Stein on CNN's "Reliable Sources" with Brian Stelter
 - *June 29:* Stein on Fox Business' "Kennedy"
 - *June 24:* Johnson - CNN.com video feature
 - *June 23:* Johnson gave remarks at NALEO Conference (on C-SPAN)
 - *June 23:* Johnson interviewed by ABC's Jordyn Phelps – available online
 - *June 22:* Johnson/Weld on CNN Libertarian Presidential Town Hall with Chris Cuomo – aired on CNN, CNN International, CNN en Espanol, livestreamed via CNNgo
 - *June 11:* Johnson interview with CNN's Victor Blackwell
 - *June 6:* Johnson on TBS' "Full Frontal with Samantha Bee" – (751,000 views)
 - *June 6:* Johnson on "PBS NewsHour" with Judy Woodruff
 - *June 1:* Johnson on C-SPAN's "Washington Journal"
 - *June 1:* Johnson/Weld on ABC's "Nightline"
 - *May 31:* Johnson/Libertarian Convention covered on ABC's "World News Now"
 - *May 30:* Johnson/Weld News Conference (on C-SPAN)
 - *May 30:* Johnson speech as Libertarian Party nominee (on C-SPAN)
 - *May 29:* Libertarian Party National Convention/Johnson news conference (on C-SPAN)
 - *May 29:* Johnson/Weld interview with CNN's Victor Blackwell
 - *May 22:* Bill Weld on CNN's "State of the Union" with Jake Tapper, also re-run by C-SPAN
 - *May 8:* Johnson on ABC's "This Week" with George Stephanopoulos
 - Johnson featured multiple times in People magazine, TIME, the New York Times, the New Yorker

1.7. Having served as the CPD's Executive Director since the organization's inception 30 years ago, I have never observed any CPD Board member approach any issue concerning the CPD, its candidate selection criteria, or its mission from a partisan perspective. The CPD has consistently conducted its business in a strictly nonpartisan fashion.

* * *

I declare under penalty of perjury that the foregoing is true and correct. Executed
this 2 day of March, 2017.



JANET H. BROWN

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TAB A

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Commission on Presidential Debates Announces 2016 Nonpartisan Candidate Selection Criteria; Forms Working Group on Format

Oct 29, 2015

Each election cycle, hundreds of individuals declare their candidacy for the Office of President of the United States, including many who do not seek the nomination of a major political party. Federal Election Commission regulations require a debate sponsor to make its candidate selection decisions on the basis of "pre-established, objective" criteria. After a thorough and wide-ranging review of alternative approaches to determining who is invited to participate in the general election debates it will sponsor, the nonpartisan, non-profit Commission on Presidential Debates (CPD) has released its 2016 Nonpartisan Candidate Selection Criteria. A copy of the criteria is attached.

Under the 2016 criteria, in addition to being Constitutionally eligible, candidates must appear on a sufficient number of state ballots to have a mathematical chance of winning a majority vote in the Electoral College, and have a level of support of at least 15% of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recently publicly-reported results at the time of the determination. The polls to be relied upon will be selected based on the quality of the methodology employed, the reputation of the polling organizations and the frequency of the polling conducted. CPD will identify the selected polling organizations well in advance of the time the criteria are applied.

The CPD's determination with respect to participation in the CPD's first-scheduled debate will be made after Labor Day 2016, but sufficiently in advance of the first-scheduled debate to allow for orderly planning. Invitations to participate in the vice-presidential debate will be extended to the running mates of each of the presidential candidates qualifying for participation in the CPD's first presidential debate. Invitations to participate in the second and third of the CPD's scheduled presidential debates will be based upon satisfaction of the same multiple criteria prior to each debate.

The CPD adopted its 2016 criteria based on the recommendations of a working group of its Board chaired by former League of Women Voters president Dorothy Ridings, who serves as a CPD Director. Ridings stated, "We considered a wide array of approaches to the candidate selection issue. We concluded that CPD serves its voter education mission best when, in the final weeks of the campaign, based on pre-established, published, objective and transparent criteria, it identifies those individuals whose public support places them among the leading candidates and invites them to debate the issues of the day. We also concluded that the best available measure of public support is high-quality public opinion polling conducted near the time of the debates."

Ridings noted that, "Under the CPD's nonpartisan criteria, no candidate or nominee of a party receives an automatic invitation. The CPD's objective criteria are applied on the same basis to all declared candidates, regardless of party affiliation or lack thereof." Ridings explained, "During the course of the campaign, the candidates are afforded many opportunities in a great variety of forums to advance their candidacies. The purpose of the criteria is to identify those candidates whose support from the electorate places them among the candidates who have a realistic chance of being elected President of the United States." Ridings added, "The realistic chance need not be overwhelming, but it must be more than theoretical."

CPD Co-Chairs Frank J. Fahrenkopf, Jr. and Michael D. McCurry noted that, "We are mindful of the changes in the electorate and the large number of voters who now self-identify as independents. We believe our candidate selection criteria appropriately address this dynamic. The CPD's criteria make participation open to any candidate, regardless of the candidate's party affiliation or status as an independent, in whom the public has demonstrated significant interest and support." The Co-Chairs further explained, "It is appropriate for a debate sponsor to take the campaign as it finds it in the final weeks leading up to Election Day. The CPD's debates are not intended to serve as a springboard for a candidate with only very modest support. Participation in the debates is determined by the level of public support a candidate enjoys as Election Day approaches." The criteria for 2016 were adopted by a majority vote of the CPD board.

Debate Format Working Group

The Co-Chairs also announced that members of the CPD board of directors would form a working group to study format innovation for the 2016 debates. The CPD has been a leader in format innovation and has initiated many changes to the format of the general election debates. The CPD has worked steadily to encourage meaningful candidate exchanges and in-depth discussion of the issues. Innovations over the years have included both single moderator debates and seated debates to facilitate in-depth exchanges and greater follow up on critical issues. In 2012, to foster extended discussion of critical issues, the first and third presidential debates used six 15-minute segments to discuss major domestic and foreign policy topics, respectively; the topics were selected and announced beforehand by the debate moderators in order to emphasize the focus on major issues.

The 2016 working group on format will review ways to build on that model of using significant time blocks to examine critical issues. The working group also will examine options for town meeting with a view toward using social media to provide citizen input. Use of social media during the primary debates will be studied to understand how it can enhance the educational value of the general election debates. The CPD will continue to work with the White House pool and other media to encourage the broad streaming of debate coverage online.

The CPD will announce format in the spring of 2016 and the moderators in the summer of 2016. The CPD, which is a 501(c)(3) organization, does not receive government, party or PAC funding of any kind.

2016 Debate Sites and Dates

On September 23, 2015, the CPD announced sites and dates for the 2016 debates, scheduling the first one in September in light of early voting. The schedule is:

First presidential debate, Wright State University, Dayton, OH, September 26, 2016

Vice presidential debate, Longwood University, Farmville, VA, October 4, 2016

Second presidential debate, Washington University in St. Louis, MO, October 9, 2016

Third presidential debate, University of Nevada Las Vegas, NV, October 19, 2016

The 2016 backup site is Hofstra University, Hempstead, NY.

COMMISSION ON PRESIDENTIAL DEBATES'

NONPARTISAN CANDIDATE SELECTION CRITERIA

FOR 2016 GENERAL ELECTION DEBATE PARTICIPATION

A. INTRODUCTION

The mission of the nonpartisan Commission on Presidential Debates (the "CPD") is to ensure, for the benefit of the American electorate, that general election debates are held every four years between the

leading candidates for the offices of President and Vice President of the United States. The CPD sponsored a series of such debates in each of the past seven general elections, and has begun the planning, preparation, and organization of a series of nonpartisan debates among leading candidates for the Presidency and Vice Presidency in the 2016 general election. As in prior years, the CPD's voter educational activities will be conducted in accordance with all applicable legal requirements, including regulations of the Federal Election Commission that require that debate sponsors extend invitations to debate based on the application of "pre-established, objective" criteria.

The goal of the CPD's debates is to afford the members of the public an opportunity to sharpen their views, in a focused debate format, of those candidates from among whom the next President and Vice President will be selected. In each of the last seven elections, there were scores of declared candidates for the Presidency, excluding those seeking the nomination of one of the major parties. During the course of the campaign, the candidates are afforded many opportunities in a great variety of forums to advance their candidacies. In order most fully and fairly to achieve the educational purposes of its debates, the CPD has developed nonpartisan, objective criteria upon which it will base its decisions regarding selection of the candidates to participate in its 2016 debates. The purpose of the criteria is to identify those candidates whose support among the electorate places them among the candidates who have a realistic chance of being elected President of the United States. The realistic chance need not be overwhelming, but it must be more than theoretical.

In connection with the 2016 general election, the CPD will apply three criteria to each declared candidate to determine whether that candidate qualifies for inclusion in one or more of the CPD's debates. The criteria are (1) constitutional eligibility, (2) ballot access, and (3) electoral support. All three criteria must be satisfied before a candidate will be invited to debate.

B. 2016 NONPARTISAN SELECTION CRITERIA

The CPD's nonpartisan criteria for selecting candidates to participate in the 2016 general election presidential debates are:

1. EVIDENCE OF CONSTITUTIONAL ELIGIBILITY

The CPD's first criterion requires satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution. The requirements are satisfied if the candidate:

- a. is at least 35 years of age;
- b. is a Natural Born Citizen of the United States and a resident of the United States for fourteen years; and
- c. is otherwise eligible under the Constitution.

2. EVIDENCE OF BALLOT ACCESS

The CPD's second criterion requires that the candidate qualify to have his/her name appear on enough state ballots to have at least a mathematical chance of securing an Electoral College majority in the 2016 general election. Under the Constitution, the candidate who receives a majority of votes in the Electoral College, at least 270 votes, is elected President regardless of the popular vote.

3. INDICATORS OF ELECTORAL SUPPORT

The CPD's third criterion requires that the candidate have a level of support of at least 15% (fifteen percent) of the national electorate as determined by five national public opinion polling organizations selected by CPD, using the average of those organizations' most recent publicly-reported results at the time of the determination. CPD will rely on the advice of a recognized expert or experts in public opinion polling in determining the polls it will rely upon. The polls to be relied upon will be selected based on the quality of the methodology

employed, the reputation of the polling organizations and the frequency of the polling conducted. CPD will identify the selected polling organizations well in advance of the time the criteria are applied.

C. APPLICATION OF CRITERIA

The CPD's determination with respect to participation in the CPD's first-scheduled debate will be made after Labor Day 2016, but sufficiently in advance of the first-scheduled debate to allow for orderly planning. Invitations to participate in the vice-presidential debate will be extended to the running mates of each of the presidential candidates qualifying for participation in the CPD's first presidential debate. Invitations to participate in the second and third of the CPD's scheduled presidential debates will be based upon satisfaction of the same multiple criteria prior to each debate.

Adopted: October 28, 2015

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TAB B

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CPD Invites Hillary Clinton and Donald J. Trump to Debate

Sep 16, 2016

Washington, D.C. (September 16, 2016) - The nonpartisan, non-profit Commission on Presidential Debates ("CPD") announced today that it has applied its Nonpartisan Candidate Selection Criteria for 2016 General Election Debate participation to determine eligibility to participate in the presidential debate to take place at Hofstra University in Hempstead, New York on September 26 and the vice-presidential debate to take place on October 4 at Longwood University in Farmville, Virginia.

Pursuant to the criteria, which were publicly announced on October 29, 2015, those candidates qualify for debate participation who: (1) are constitutionally eligible to hold the office of President of the United States; (2) have achieved ballot access in a sufficient number of states to win a theoretical Electoral College majority in the general election; and (3) have demonstrated a level of support of at least 15 percent of the national electorate, as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results.

The Board of Directors of the CPD convened today to apply the criteria. Of the many declared candidates, four candidates presently satisfy the first two criteria: Hillary Clinton, Donald Trump, Gary Johnson and Jill Stein.

With respect to the third criterion, on August 15, 2016, CPD announced the five polls it would rely upon, which were selected with the professional advice of Dr. Frank Newport, Editor-in-Chief of Gallup. The polls were selected based on: the reliable frequency of polling and sample size used by the polling organization; the soundness of the survey methodology employed by the polling organization; and the longevity and reputation of the polling organization. The five selected polls are: ABC-Washington Post; CBS-New York Times; CNN-Opinion Research Corporation; Fox News; and NBC-Wall Street Journal.

With the assistance of Dr. Newport, the Board determined that the polling averages called for in the third criterion are as follows: Hillary Clinton (43%), Donald Trump (40.4%), Gary Johnson (8.4%) and Jill Stein (3.2%). Accordingly, Hillary Clinton and her running mate, Tim Kaine, and Donald Trump and his running mate, Mike Pence, qualify to participate in the September 26 presidential debate and the October 4 vice-presidential debate, respectively. No other candidates satisfied the criteria for inclusion in the September 26 and October 4 debates. The criteria will be reapplied to all candidates in advance of the second and third presidential debates.

The CPD has successfully sponsored the presidential and vice presidential general election debates since 1988. The CPD's planning for the 2016 debates has extended over a period of years and has drawn upon the CPD's now-extensive experience in sponsoring general election debates. CPD announced the five journalists who will moderate those debates: Lester Holt, Elaine Quijano, Martha Raddatz, Anderson Cooper, and Chris Wallace.

The candidates who have qualified to participate today previously have committed to participate in the debates sponsored by the CPD.

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CPD Invites Hillary Clinton and Donald J. Trump to Debate

Oct 4, 2016

Washington, D.C. (October 4, 2016) - The nonpartisan, non-profit Commission on Presidential Debates ("CPD") announced today that it has applied its Nonpartisan Candidate Selection Criteria for 2016 General Election Debate participation to determine eligibility to participate in the presidential debate to take place at Washington University in St. Louis, Missouri.

Pursuant to the criteria, which were publicly announced on October 29, 2015, those candidates qualify for debate participation who: (1) are constitutionally eligible to hold the office of President of the United States; (2) have achieved ballot access in a sufficient number of states to win a theoretical Electoral College majority in the general election; and (3) have demonstrated a level of support of at least 15 percent of the national electorate, as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results.

The Board of Directors of the CPD convened today to apply the criteria. Of the many declared candidates, four candidates presently satisfy the first two criteria: Hillary Clinton, Donald Trump, Gary Johnson and Jill Stein.

With respect to the third criterion, on August 15, 2016, CPD announced the five polls it would rely upon, which were selected with the professional advice of Dr. Frank Newport, Editor-in-Chief of Gallup. The polls were selected based on: the reliable frequency of polling and sample size used by the polling organization; the soundness of the survey methodology employed by the polling organization; and the longevity and reputation of the polling organization. The five selected polls are: ABC-Washington Post; CBS-New York Times; CNN-Opinion Research Corporation; Fox News; and NBC-Wall Street Journal.

With the assistance of Dr. Newport, the Board determined that the polling averages called for in the third criterion are as follows: Hillary Clinton (44.8%), Donald Trump (40.8%), Gary Johnson (7.4%) and Jill Stein (2.6%). Accordingly, Hillary Clinton and Donald Trump qualify to participate in the October 9 debate. No other candidates satisfied the criteria for inclusion in the October 9. The criteria will be reapplied to all candidates in advance of the third presidential debate.

The CPD has successfully sponsored the presidential and vice presidential general election debates since 1988. The CPD's planning for the 2016 debates has extended over a period of years and has drawn upon the CPD's now-extensive experience in sponsoring general election debates. CPD announced the five journalists who will moderate those debates: Lester Holt, Elaine Quijano, Martha Raddatz, Anderson Cooper, and Chris Wallace.

The candidates who have qualified to participate today previously have committed to participate in the debates sponsored by the CPD.

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TAB D

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CPD Invites Hillary Clinton and Donald J. Trump to Third Presidential Debate

Oct 14, 2016

Washington, D.C. (October 14, 2016) - The nonpartisan, non-profit Commission on Presidential Debates ("CPD") announced today that it has applied its Nonpartisan Candidate Selection Criteria for 2016 General Election Debate participation to determine eligibility to participate in the third presidential debate to take place at University of Nevada, Las Vegas.

Pursuant to the criteria, which were publicly announced on October 29, 2015, those candidates qualify for debate participation who: (1) are constitutionally eligible to hold the office of President of the United States; (2) have achieved ballot access in a sufficient number of states to win a theoretical Electoral College majority in the general election; and (3) have demonstrated a level of support of at least 15 percent of the national electorate, as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results.

The Board of Directors of the CPD convened today to apply the criteria. Of the many declared candidates, four candidates presently satisfy the first two criteria: Hillary Clinton, Donald Trump, Gary Johnson and Jill Stein.

With respect to the third criterion, on August 15, 2016, CPD announced the five polls it would rely upon, which were selected with the professional advice of Dr. Frank Newport, Editor-in-Chief of Gallup. The polls were selected based on: the reliable frequency of polling and sample size used by the polling organization; the soundness of the survey methodology employed by the polling organization; and the longevity and reputation of the polling organization. The five selected polls are: ABC-Washington Post; CBS-New York Times; CNN-Opinion Research Corporation; Fox News; and NBC-Wall Street Journal.

With the assistance of Dr. Newport, the Board determined that the polling averages called for in the third criterion are as follows: Hillary Clinton (45.8%), Donald Trump (40.4%), Gary Johnson (7.0%) and Jill Stein (2.2%). Accordingly, Hillary Clinton and Donald Trump qualify to participate in the October 19 debate. No other candidates satisfied the criteria for inclusion in the October 19 debate.

The CPD has successfully sponsored the presidential and vice presidential general election debates since 1988. The CPD's planning for the 2016 debates has extended over a period of years and has drawn upon the CPD's now-extensive experience in sponsoring general election debates. CPD announced the five journalists who will moderate those debates: Lester Holt, Elaine Quijano, Martha Raddatz, Anderson Cooper, and Chris Wallace.

The candidates who have qualified to participate today previously have committed to participate in the debates sponsored by the CPD.

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EXHIBIT 5

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates

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MUR 4987

DECLARATION OF JANET H. BROWN

I, Janet H. Brown, Executive Director of the Commission on Presidential Debates ("CPD"), give this declaration based on personal knowledge.

Background

1. I have been the Executive Director of the CPD since March 1987. Under the supervision of the Board of Directors, I am primarily responsible for planning and organizing the debates the CPD intends to sponsor in 2000.

2. Prior to serving as Executive Director of the CPD, I served on the staffs of the late Ambassador Elliot Richardson and former U.S. Senator John Danforth. Additionally, I have held appointments at the White House Domestic Council and the Office of Management and Budget. I am a graduate of Williams College and have a master's degree in public administration from Harvard University.

3. The CPD is a private, nonpartisan, not-for-profit corporation dedicated solely to the sponsorship of general election presidential and vice presidential debates and related voter education functions. The CPD was organized in February 1987, under the laws of the District of Columbia, and has its sole office in the District of Columbia. CPD's Articles of Incorporation identify its purpose as "to organize, manage, produce, publicize and support debates for the candidates for President of United States . . ." The CPD has been granted

tax-exempt status by the Internal Revenue Service under §501(c)(3) of the Internal Revenue Code. Consistent with its §501(c)(3) status, the CPD makes no assessment of the merits of any candidate's or party's views, and does not advocate or oppose the election of any candidate or party.

4. The CPD has sponsored presidential and vice presidential debates in 1988, 1992 and 1996. The CPD's debates have been viewed by tens of millions of Americans and have served a valuable voter education function. Prior to CPD's sponsorship in 1988, televised presidential debates were produced in only four general election years: by the networks in 1960, and by the non-profit League of Women Voters in 1976, 1980, and 1984. No televised presidential debates were held in the general election in 1964, 1968 or 1972.

5. The CPD receives no government funding; nor does it receive funds from any political party. The CPD obtains the funds to produce its debates from the universities and communities that host the debates, and it relies on corporate and private donations to augment contributions from the debate hosts and to support the CPD's ongoing voter education activities. The CPD currently is attempting to raise funds and in-kind contributions from a variety of corporate and non-profit entities specializing in interactive application of the Internet in order to enable the CPD to expand and improve upon the voter education opportunities it provides on its website. None of the organizations that have donated to the CPD have sought or had any input whatsoever in the promulgation of CPD candidate selection criteria or in the selection of debate participants.

6. The CPD has a twelve-member, all volunteer Board of Directors ("CPD Board"). The Co-Chairmen of the CPD Board, Frank J. Fahrenkopf, Jr. and Paul G. Kirk, Jr.,

each are distinguished civic leaders with extensive records of public service. Mr. Fahrenkopf has served as Co-Chairman of the Rivlin Commission, which investigated and reported on the government of the District of Columbia, was a founder of the National Endowment for Democracy, is a member of the Board of Trustees of the National Judicial College, the ABA-sponsored judicial education center for federal and state judges, and is the Chairman of the American Bar Association's Coalition for Justice, a group coordinating the ABA's initiative to improve the American system of justice. Mr. Fahrenkopf also serves on the Board of Trustees of the E. L. Wiegand Foundation and is a member of the Greater Washington Board of Trade, the Economic Club of Washington and the Federal City Council. Mr. Kirk has served as the Co-Chairman of the National Student/Parent Mock Election and on numerous civic and corporate boards. Mr. Kirk currently is the Chairman of the Board of Directors of the John F. Kennedy Library Foundation and is Of Counsel to the law firm of Sullivan & Worcester, LLP of Boston, Massachusetts.

7. The remaining members of the CPD Board are:

Clifford L. Alexander, Jr., President of Alexander & Associates; former Chairman of the Equal Employment Opportunity Commission.

Howard G. Buffett, Chairman of GSI, Inc.

The Honorable Paul Coverdell, Member of the U.S. Senate from Georgia.

John C. Danforth, Lawyer and Partner, Bryan Cave; Retired U.S. Senator from Missouri.

The Honorable Jennifer Dunn, Member of the U.S. House of Representatives from Washington.

Antonia Hernandez, President, Mexican American Legal Defense Fund.

Caroline Kennedy, Author.

Paul H. O'Neill, Chairman of the Board of Aluminum Company of America; former Deputy Director of the Office of Management and Budget.

Newton Minow, Lawyer and Partner, Sidley & Austin; former Chairman of the Federal Communications Commission.

Dorothy Ridings, President and CEO of the Council on Foundations; former President, League of Women Voters.

8. Former Presidents Gerald Ford, Jimmy Carter and Ronald Reagan serve as Honorary Co-Chairmen of CPD.

History of the Commission on Presidential Debates

9. CPD was organized in response to the recommendations of two separate studies on presidential elections and debates: (1) the April 1986 Final Report of the Commission on National Elections, entitled Electing the President: A Program for Reform, a nine-month study of presidential elections by a distinguished group of news executives, elected officials, business people, political consultants, and lawyers conducted under the auspices of the Georgetown University Center for Strategic and International Studies, and (2) the Theodore H. White Conference on Presidential Debates held in March 1986 at the Harvard Institute of Politics and chaired by Newton Minow, former chairman of the Federal Communications Commission.

10. Both of those studies underscored the importance presidential debates had assumed in American electoral politics. Rather than permit the existence of debates to turn on the vagaries of each election, the studies recommended that the debates be "institutionalized." More specifically, both studies recommended that the two major political parties create a mechanism designed to ensure, to the greatest extent possible, that debates become a permanent and integral part of the presidential election process.

11. Frank J. Fahrenkopf, Jr. and Paul G. Kirk, Jr., then-chairmen of the Republican and Democratic National Committees respectively, responded by initiating CPD as a not-for-profit corporation separate and apart from their party organizations.

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While Messrs. Kirk and Fahrenkopf served as the chairs of the major national party committees at the time CPD was formed, they no longer do so; nor do the current chairs of those committees sit on CPD's Board of Directors. No CPD Board member is an officer of the Democratic or Republican National Committee. Although some CPD Board members, like the majority of this country's civic leaders, identify with the Republican or Democratic party, that certainly is not the case with every Board member. For example, I am not aware of what party, if any, Board members Dorothy Ridings or Howard Buffett would identify with if asked.

1988: The CPD Successfully Launches Its First Debates

12. On July 7, 1987, over one year prior to the sponsorship of the CPD's first debates, CPD formed an advisory panel of distinguished Americans, including individuals not affiliated with any party, in order to provide guidance to CPD with respect to several areas, including non-major party candidate participation in CPD-sponsored debates. From virtually the beginning of CPD's operations, CPD's Board recognized that, although the leading contenders for the offices of *President and Vice President of the United States* historically have come from the major parties, CPD's educational mission would be furthered by developing criteria by which to identify any non-major party candidate who, in a particular election year, was a leading candidate for the office of President or Vice President of the United States, and to whom an invitation should be extended to participate in one or more CPD-sponsored debate.

13. The individuals serving on that advisory panel (and their then-current principal affiliation) included:

Charles Benton, Chairman, Public Media Inc.;

Ambassador Holland Coors, 1987 Year of the Americas;

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Board appointed a subcommittee of the advisory panel, headed by Professor Richard Neustadt of the Kennedy School of Government, Harvard University, to draw on the deliberations and develop nonpartisan criteria for the identification of appropriate third-party candidates to participate in CPD sponsored debates.

15. On November 20, 1987, Professor Neustadt's subcommittee recommended to the CPD Board the adoption of specific nonpartisan candidate selection criteria intended to identify those candidates other than the nominees of the major parties with a realistic chance of becoming President or Vice President of the United States. The Neustadt subcommittee reported that the adoption and application of such criteria would help ensure that the primary educational purpose of the CPD -- to ensure that future Presidents and Vice Presidents of the United States are elected after the voters have had an opportunity to hear them debate their principal rivals -- would be fulfilled.

16. While the 1987 candidate selection criteria themselves were quite detailed, they included a review of three types of factors: (1) evidence of national organization; (2) signs of national newsworthiness and competitiveness, and (3) indicators of national public enthusiasm or concern, to determine whether a candidate had a realistic chance of election.

17. On February 4, 1988, the CPD Board unanimously adopted the selection criteria proposed by Professor Neustadt's subcommittee. The sole objective of the criteria adopted by the CPD in 1988 was to structure the CPD debates so as to further the nonpartisan educational purpose of those debates, while at the same time complying fully with applicable law. An Advisory Committee to the CPD Board, chaired by Professor

Neustadt, was created for the purpose of applying the 1988 candidate selection criteria to the facts and circumstances of the 1988 campaign.

18. Professor Neustadt's Advisory Committee met in advance of the debates and carefully applied the candidate selection criteria to the facts and circumstances of the 1988 campaign. The Advisory Committee unanimously concluded that no non-major party candidate satisfied the criteria and, accordingly, the Advisory Committee recommended to the CPD Board that no non-major party candidate be extended an invitation to participate in the CPD's 1988 debates. The CPD Board of Directors, after carefully considering the Advisory Committee's recommendation, the criteria and the facts and circumstances of the 1988 campaign, voted unanimously to accept the Advisory Committee's recommendation.

19. Although the Bush and Dukakis campaigns reached an agreement that addressed certain production aspects of the 1988 debates, that agreement in no sense impaired the voter education value of those debates, in which a number of prominent journalists participated, including Jim Lehrer, Peter Jennings, Tom Brokaw and Bernard Shaw.

1992: The CPD's Debates Include Three Candidates

20. On or about January 16, 1992, the CPD Board requested that the Advisory Committee, again chaired by Professor Neustadt, assist the CPD in promulgating nonpartisan candidate selection criteria in connection with the 1992 election. Pursuant to the Advisory Committee's recommendation, the CPD Board adopted substantially the same selection criteria used in 1988, with minor technical changes.

21. The 1992 Advisory Committee, consisting of Professor Neustadt; Professor Diana Carlin of the University of Kansas; Dorothy Ridings, Publisher and President of the Bradenton Herald and former President of the League of Women Voters; Kenneth

Thompson, Director of the Miller Center, University of Virginia; and Eddie Williams, President, Joint Center for Political and Economic Studies, met on September 9, 1992 to apply the candidate selection criteria to the 100-plus declared presidential candidates seeking election in 1992. At that time, it was the unanimous conclusion of the 1992 Advisory Committee that no non-major party candidate then seeking election had a realistic chance in 1992 of becoming the next President of the United States. Ross Perot, who had withdrawn from the race in July 1992, was not a candidate for President at the time of this determination.

22. On October 5, 1992, the Advisory Committee reconvened at the request of the CPD Board to update its application of the 1992 criteria to include subsequent developments, including Ross Perot's October 1, 1992 reentry into the campaign. The Advisory Committee concluded that Mr. Perot satisfied the selection criteria, and based on that recommendation, the CPD Board extended invitations to Mr. Perot and his running mate, Admiral James B. Stockdale, to participate in its first two 1992 debates. When it became clear that the debate schedule -- four debates in eight days -- would prevent any meaningful reapplication of the selection criteria, the CPD extended its original recommendation that the Perot/Stockdale campaign participate in two debates to all four debates. See October 6 and 7, 1992 letters (attached at Tab A). Thereafter, the CPD produced three presidential debates involving President Bush, Governor Clinton, and Mr. Perot, and one vice presidential debate between Vice President Quayle, Senator Gore, and Admiral Stockdale.

23. When the Advisory Committee applied the 1992 criteria to Mr. Perot, it faced the unprecedented situation in which a candidate, whose standing in the polls had

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been approximately 40%, had withdrawn from the race, but then rejoined the campaign shortly before the debates, with unlimited funds to spend on television campaigning. The Advisory Committee found that it was unable to predict the consequences of that combination, but agreed that Mr. Perot had a chance of election if he did well enough that no candidate received a majority of electoral votes and the election was determined by the United States House of Representatives. Although the Advisory Committee viewed Mr. Perot's prospect of election as unlikely, it concluded that the possibility was not unrealistic, and that Mr. Perot therefore met the CPD's 1992 criteria for debate participation. See September 17, 1996 letter (attached at Tab B).

24. The Complainants in MUR 4987 suggest that, at the time the CPD decided to include Ross Perot in its 1992 debates, Mr. Perot's support was at 7% in national polls. In fact, some polls available at the time the CPD made its decision showed Mr. Perot's support at as high as 17-20%. In any event, before his abrupt withdrawal from the campaign, Mr. Perot's public support had been almost 40%.

1996: The CPD's Criteria are Upheld as Objective and Nonpartisan

25. After evaluation of the prior debates and careful consideration of how best to achieve its educational mission, on September 19, 1995, the CPD Board adopted the same selection criteria, with minor changes, for use in the 1996 debates, and appointed a 1996 Advisory Committee consisting of the same members as the 1992 committee.

26. On September 16, 1996, the Advisory Committee met to apply the candidate selection criteria to the more than 130 declared non-major party presidential candidates seeking election in 1996. Although the 1996 candidate selection criteria did not expressly require it to do so, the 1996 Advisory Committee independently applied the criteria to the Democratic and Republican party nominees. In light of its findings, the Advisory

Committee recommended to the CPD's Board that only President Clinton and Senator Dole be invited to participate in the CPD's 1996 presidential debate, and that only Vice President Gore and Congressman Kemp be invited to participate in the CPD's 1996 vice presidential debate. The CPD Board unanimously accepted the 1996 Advisory Committee's recommendation.

27. In a letter from Professor Neustadt, the Advisory Committee explained that after careful consideration of the circumstances in the 1996 campaign, it found that neither Mr. Perot nor any other non-major party candidate had a realistic chance of being elected president that year. With respect to Mr. Perot, the Advisory Committee emphasized that the circumstances of the 1996 campaign differed from the unprecedented circumstances of 1992, and that Mr. Perot's funding was limited by his acceptance of a federal subsidy. See September 17, 1996 letter, Tab B.

28. Just prior to the CPD's 1996 debates, Perot '96, Ross Perot's campaign committee, and the Natural Law Party (the "NLP") filed separate administrative complaints with the Federal Election Commission (the "FEC") alleging, among other things, that the CPD was in violation of the FEC's debate regulations because it provided an "automatic" invitation to its debates to the major party nominees and because it employed impermissibly "subjective" candidate selection criteria. Perot '96 and the NLP then filed lawsuits against the CPD and the FEC in federal court seeking to halt the scheduled debates. After expedited briefing, the District Court dismissed the suits. See Hagelin v. Federal Election Commission, 1996 WL 566762 (D.D.C. Oct. 1, 1996) (NO. CIV. A. 96-2132, CIV. A. 96-2196) (attached at Tab C). The U.S. Court of Appeals for the D.C. Circuit upheld the lower

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court's decision, see Perot v. Federal Election Commission, 97 F.3d 553 (D.C. Cir. 1996) (attached at Tab D), and the Supreme Court declined to hear the matter.

29. Subsequently, in 1998, the FEC found that there was no reason to believe that the CPD had violated any of the Commission's regulations, and the administrative complaints were dismissed. In brief, the FEC agreed that the requirement that decisions be made based on "objective criteria" did not mean the criteria must be capable of mechanical application. Rather, it was sufficient that the CPD's criteria "reduce a debate sponsor's use of its own personal opinions in selecting candidates," and are not "arranged in some manner as to guarantee a preordained result." See Statement of Reasons, MURs 4451 and 4473 (April 6, 1998) (attached at Tab E). As to the contention that the criteria prohibited "automatic" invitations to the nominees, the FEC, again agreeing with the CPD, explained that the regulations do not prohibit such invitations; rather they require that other criteria exist to identify candidates other than the major party nominees who qualify for invitation. The CPD's criteria satisfied this requirement.

30. In October 1996, following the dismissal of the lawsuits, the CPD sponsored two presidential debates between President Clinton and Senator Dole and one vice-presidential debate between their running mates.

2000: The CPD Adopts More Streamlined Criteria

31. After each election cycle, the CPD has examined a wide-range of issues relating to the debates. These reviews have considered format, timing and other issues, including the candidate selection process. The review the CPD conducts after each election is part of the CPD's ongoing effort to enhance the contribution the debates make to the process by which Americans select their next President. After very careful study and deliberation, the CPD adopted more streamlined criteria in January 2000 for use in the 2000

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sufficiently inclusive to invite those candidates considered to be among the leading candidates, without being so inclusive that invitations would be extended to candidates with only very modest levels of public support, thereby creating an unacceptable risk that leading candidates with the highest levels of public support would refuse to participate.

35. Prior to adopting the 2000 Criteria, the CPD conducted its own analysis of the results of presidential elections over the modern era and concluded that a level of fifteen percent support of the national electorate is achievable by a significant third party or independent candidate. Furthermore, fifteen percent was the figure used in the League of Women Voters' 1980 selection criteria, which resulted in the inclusion of independent candidate John Anderson in one of the League's debates. In making this determination, the CPD considered, in particular, the popular support achieved by George Wallace in 1968 (Mr. Wallace had achieved a level of support as high as 20% in pre-election polls from September 1968); by John Anderson in 1980 (Mr. Anderson's support in various polls reached fifteen percent when the League of Women Voters invited him to participate in one of its debates); and by Ross Perot in 1992 (Mr. Perot's standing in 1992 polls at one time was close to 40% and exceeded that of the major party candidates, and he ultimately received 18.7% of the popular vote).

36. The CPD considered, but rejected, the possibility of using public funding of general election campaigns, rather than polling data, as a criterion for debate participation. That criterion is itself both potentially overinclusive and underinclusive. Eligibility for general election funding is determined based on performance in the prior presidential general election. The CPD realized that such an approach would be underinclusive to the extent that it would automatically preclude participation by a prominent newcomer (such as

Ross Perot in 1992), but also would be overinclusive to the extent it would mandate an invitation to the nominee of a party that performed well in a prior election, but who did not enjoy significant national public support in the current election. In addition, while the United States Congress determined that five percent was a sufficient level of support for purposes of determining eligibility for federal funding as a "minor" party (at a level that is substantially lower than that received by the "major" parties), as noted, a debate host hoping to present the public with a debate among the leading candidates (none of whom are required to debate) must necessarily take into account a different set of considerations. Moreover, unlike the CPD's fifteen percent standard, the standard of qualification for federal funding in the general election has a preordained result: it automatically includes the Reform Party candidate but necessarily precludes participation by any other third party candidate.

37. The CPD has retained Frank Newport, the Editor-in-Chief of the Gallup Poll, as a consultant to advise the CPD in connection with the implementation of the 2000 Criteria. Mr. Newport is a well-respected expert in the areas of polling methodology and statistics.

38. I understand that the complainants challenge the CPD's 2000 Criteria on the grounds that they are impermissibly subjective in that they are designed to exclude Patrick Buchanan from participating in the CPD's 2000 debates, and to limit the debate participants to the nominees of the Democratic and Republican parties. Those claims are false. The CPD adopted the 2000 Criteria for the sole purpose of furthering its educational mission. On their face, the criteria are pre-established and objective within the meaning of the FEC's debate regulations. The CPD, as a non-profit, nonpartisan debate sponsor, is

entitled to select its own objective criteria and nothing about its decision to use the 2000 Criteria, including its fifteen percent standard, is contrary to the guidelines the FEC has provided to debate sponsors. In fact, before the CPD announced the 2000 Criteria, Mr. Buchanan himself identified fifteen percent as a reasonable level of support for debate inclusion. See Transcript of NBC News' October 31, 1999 "Meet the Press" (attached at Tab G).

39. I am aware that the complainants cite statements attributed to George Stephanopolous, former advisor to President Clinton, that the Democratic and Republican party nominees in 1996 each wanted to exclude Mr. Perot from the CPD's 1996 debates. See Complaint at 18. I do not know if this is true, but it most certainly is true that the major party nominees had no input into the CPD's candidate selection decision in 1996. In 1988, 1992 and 1996, the CPD's decisions regarding which candidates to invite to its debates were made by the CPD's Board's unanimous adoption of the recommendations of independent Advisory Committees charged with the task of applying the CPD's pre-established, objective criteria. At no time did any campaign or the representative of any campaign have a role in the Advisory Committees' or the CPD Board's decision-making process.

40. Currently, the CPD is well along in its preparations for the production of the 2000 debates. On January 6, 2000, the CPD announced the following schedule for its 2000 debates:

- First presidential debate: Tuesday, October 3, University of Massachusetts, Boston, MA
- Vice presidential debate: Thursday, October 5, Centre College, Danville, KY
- Second presidential debate: Wednesday, October 11, Wake Forest University.

- Third presidential debate: Tuesday, October 17, Washington University in St. Louis, MO

41. In addition to sponsorship of the 1988, 1992, 1996 debates and its planned sponsorship of the 2000 debates, the CPD has engaged in a number of other related voter education activities, each intended in a nonpartisan manner to enhance the educational value of the debates themselves. In 1988, the CPD, in conjunction with the Library of Congress and the Smithsonian Institution, prepared illustrated brochures on the history and role of political debates. In 1990, the CPD sponsored a symposium on debate format attended by academic experts, journalists, political scientists and public policy observers. Also in 1990, the CPD produced a videotape and brochure giving guidance to schools and civic groups on how to sponsor debates. In 1992, the CPD produced a viewers' guide to debates in cooperation with the Speech Communication Association. In connection with the 1996 Debates, the CPD sponsored DebateWatch '96, in which over 130 organizations (including numerous cities and towns, high schools, presidential libraries, civic associations, universities and chambers of commerce) participated by hosting forums in which citizens viewed the debates together and had the opportunity to discuss the debates afterwards with other viewers and listeners. In connection with the 2000 election, the CPD is planning to

increase the numerous voter education opportunities available on or through its website, and to produce a two-hour PBS special, "Debating our Destiny," in conjunction with McNeil/Lehrer Productions.

42. I know of no other debate sponsor that plans to host televised presidential debates in 2000. If the CPD is prevented from acting as a debate sponsor, debates including the major party candidates may not take place this year. If that were the case, in addition to the immeasurable injury to the American public and the electoral process, the time, energy and effort of an enormous number of people would have been expended for naught. Among those who would be injured are the CPD's many contributors, Debate Watch hosts and participants, and the communities hosting the debates themselves (the University of Massachusetts and Boston; Centre College and Danville, Kentucky; Wake Forest University and Winston-Salem, North Carolina; and Washington University and St. Louis).

43. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of May, 2000.


JANET H. BROWN

EXHIBIT 6

170444-1896

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates

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MUR 6869R & 6942R

DECLARATION OF MICHAEL D. MCCURRY

I, Michael D. McCurry, give this declaration based on personal knowledge.

1. I serve as a member of the Board of Directors of the nonprofit, nonpartisan Commission on Presidential Debates (the "CPD") and have done so since November 2006. This declaration addresses the time period when I have served on the Board.

2. Each election cycle in which I was on the CPD Board, the CPD devoted great care and attention to its adoption and application of nonpartisan candidate selection criteria. The CPD sponsors debates because it believes the voters should have the opportunity to view the leading candidates, regardless of the party affiliation or lack thereof, debate in the final weeks of a very long campaign. It has consistently approached candidate selection with this voter education goal in mind.

3. Contrary to what I understand the complainants have claimed, the CPD's candidate selection criteria have not been adopted or applied with any partisan purpose. They have not been adopted or applied with the intent to keep any party or candidate from participating in the CPD's debates or to bring about a predetermined result. Rather, the Criteria were adopted and applied to further the legitimate voter education purposes for which CPD sponsors debates.

4. It has long been my view that the CPD's debates should include any independent or non-major party candidate if that candidate is properly considered a leading

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candidate based on his or her public support. I have not supported including candidates who enjoy only very modest levels of public support. The CPD's candidate selection criteria are designed to identify the leading candidates.

5. I have never observed any Board member ever approach any issue concerning the CPD or its mission from a partisan perspective and the CPD has conducted its business in a strictly nonpartisan fashion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 17, 2017.



Michael D. McCurry

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates

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MUR 6869R & 6942R

DECLARATION OF HOWARD G. BUFFETT

I, Howard G. Buffett, give this declaration based on personal knowledge.

1. I serve as a member of the Board of Directors of the nonprofit, nonpartisan Commission on Presidential Debates (the "CPD") and have done so since April 1998. This declaration addresses the time period I have served on the Board.

2. Each election cycle in which I was on the CPD Board, the CPD devoted great care and attention to its adoption and application of nonpartisan candidate selection criteria. The CPD sponsors debates because it believes the voters should have the opportunity to view the leading candidates, regardless of the party affiliation or lack thereof, debate in the final weeks of a very long campaign. It has consistently approached candidate selection with this voter education goal in mind.

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4. It has long been my view that the CPD's debates should include any independent or non-major party candidate if that candidate is properly considered a leading

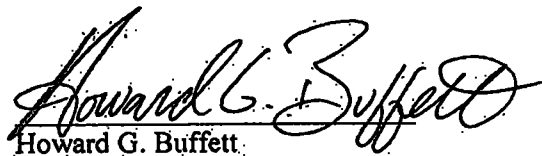
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candidate based on his or her public support. I have not supported including candidates who enjoy only very modest levels of public support. The CPD's candidate selection criteria are designed to identify the leading candidates.

5. I have never observed any Board member ever approach any issue concerning the CPD or its mission from a partisan perspective and the CPD has conducted its business in a strictly nonpartisan fashion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 17, 2017.


Howard G. Buffett

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates

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) MUR 6869R & 6942R

DECLARATION OF JOHN C. DANFORTH

I, John C. Danforth, give this declaration based on personal knowledge.

1. I serve as a member of the Board of Directors of the nonprofit, nonpartisan Commission on Presidential Debates (the "CPD") and have done so since April 1994. This declaration addresses the time period I have served on the Board.

2. Each election cycle in which I was on the CPD Board, the CPD devoted great care and attention to its adoption and application of nonpartisan candidate selection criteria. The CPD sponsors debates because it believes the voters should have the opportunity to view the leading candidates, regardless of the party affiliation or lack thereof, debate in the final weeks of a very long campaign. It has consistently approached candidate selection with this voter education goal in mind.

3. Contrary to what I understand the complainants have claimed, the CPD's candidate selection criteria have not been adopted or applied with any partisan purpose. They have not been adopted or applied with the intent to keep any party or candidate from participating in the CPD's debates or to bring about a predetermined result. Rather, the Criteria were adopted and applied to further the legitimate voter education purposes for which CPD sponsors debates.

4. It has long been my view that the CPD's debates should include any independent or non-major party candidate if that candidate is properly considered a leading

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candidate based on his or her public support. I have not supported including candidates who enjoy only very modest levels of public support. The CPD's candidate selection criteria are designed to identify the leading candidates.

5. I have never observed any Board member ever approach any issue concerning the CPD or its mission from a partisan perspective and the CPD has conducted its business in a strictly nonpartisan fashion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 17, 2017.


John C. Danforth

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

The Commission on Presidential Debates)

MUR 6869R & 6942R

DECLARATION OF JOHN GRIFFEN

I, John Griffen, give this declaration based on personal knowledge.

1. I serve as a member of the Board of Directors of the nonprofit, nonpartisan Commission on Presidential Debates (the "CPD") and have done so since December 2010. This declaration addresses the time period I have served on the Board.

2. Each election cycle in which I was on the CPD Board, the CPD devoted great care and attention to its adoption and application of nonpartisan candidate selection criteria. The CPD sponsors debates because it believes the voters should have the opportunity to view the leading candidates, regardless of the party affiliation or lack thereof, debate in the final weeks of a very long campaign. It has consistently approached candidate selection with this voter education goal in mind.

3. Contrary to what I understand the complainants have claimed, the CPD's candidate selection criteria have not been adopted or applied with any partisan purpose. They have not been adopted or applied with the intent to keep any party or candidate from participating in the CPD's debates or to bring about a predetermined result. Rather, the Criteria were adopted and applied to further the legitimate voter education purposes for which CPD sponsors debates.

4. It has long been my view that the CPD's debates should include any independent or non-major party candidate if that candidate is properly considered a leading


candidate based on his or her public support. I have not supported including candidates who enjoy only very modest levels of public support. The CPD's candidate selection criteria are designed to identify the leading candidates.

5. I have never observed any Board member ever approach any issue concerning the CPD or its mission from a partisan perspective and the CPD has conducted its business in a strictly nonpartisan fashion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

February 1, 2017.

Maude


John Griffen

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candidate based on his or her public support. I have not supported including candidates who enjoy only very modest levels of public support. The CPD's candidate selection criteria are designed to identify the leading candidates.

5. I have never observed any Board member ever approach any issue concerning the CPD or its mission from a partisan perspective and the CPD has conducted its business in a strictly nonpartisan fashion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 17, 2017.


Antonia Hernandez

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

The Commission on Presidential Debates)

MUR 6869R & 6942R

DECLARATION OF JOHN I. JENKINS

I, John I. Jenkins, give this declaration based on personal knowledge.

1. I serve as a member of the Board of Directors of the nonprofit, nonpartisan Commission on Presidential Debates (the "CPD") and have done so since October 2011.

This declaration addresses the time period I have served on the Board.

2. Each election cycle in which I was on the CPD Board, the CPD devoted great care and attention to its adoption and application of nonpartisan candidate selection criteria. The CPD sponsors debates because it believes the voters should have the opportunity to view the leading candidates, regardless of the party affiliation or lack thereof, debate in the final weeks of a very long campaign. It has consistently approached candidate selection with this voter education goal in mind.

3. Contrary to what I understand the complainants have claimed, the CPD's candidate selection criteria have not been adopted or applied with any partisan purpose. They have not been adopted or applied with the intent to keep any party or candidate from participating in the CPD's debates or to bring about a predetermined result. Rather, the Criteria were adopted and applied to further the legitimate voter education purposes for which CPD sponsors debates.

4. It has long been my view that the CPD's debates should include any independent or non-major party candidate if that candidate is properly considered a leading

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candidate based on his or her public support. I have not supported including candidates who enjoy only very modest levels of public support. The CPD's candidate selection criteria are designed to identify the leading candidates.

5. I have never observed any Board member ever approach any issue concerning the CPD or its mission from a partisan perspective and the CPD has conducted its business in a strictly nonpartisan fashion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 11, 2017.


John I. Jenkins

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates

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MUR 6869R & 6942R

DECLARATION OF NEWTON N. MINOW

I, Newton N. Minow, give this declaration based on personal knowledge.

1. I have served as a member of the Board of Directors of the nonprofit, nonpartisan Commission on Presidential Debates (the "CPD") since April 1994. This declaration addresses the time period I have served on the Board.

2. Each election cycle in which I was on the CPD Board, the CPD devoted great care and attention to its adoption and application of nonpartisan candidate selection criteria. The CPD sponsors debates because it believes the voters should have the opportunity to view the leading candidates, regardless of the party affiliation or lack thereof, debate in the final weeks of a very long campaign. It has consistently approached candidate selection with this voter education goal in mind.

3. Contrary to what I understand the complainants have claimed, the CPD's candidate selection criteria have not been adopted or applied with any partisan purpose. They have not been adopted or applied with the intent to keep any party or candidate from participating in the CPD's debates or to bring about a predetermined result. Rather, the Criteria were adopted and applied to further the legitimate voter education purposes for which CPD sponsors debates.

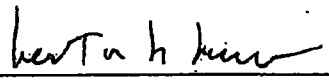
4. It has long been my view that the CPD's debates should include any independent or non-major party candidate if that candidate is properly considered a leading

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candidate based on his or her public support. I have not supported including candidates who enjoy only very modest levels of public support. The CPD's candidate selection criteria are designed to identify the leading candidates.

5. I have never observed any Board member ever approach any issue concerning the CPD or its mission from a partisan perspective and the CPD has conducted its business in a strictly nonpartisan fashion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 22, 2017.



Newton N. Minow

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

The Commission on Presidential Debates)

MUR 6869R & 6942R

DECLARATION OF RICHARD D. PARSONS

I, Richard D. Parsons, give this declaration based on personal knowledge.

1. I serve as a member of the Board of Directors of the nonprofit, nonpartisan Commission on Presidential Debates (the "CPD") and have done so since December 2010. This declaration addressed the time period I have served on the Board.

2. Each election cycle in which I was on the CPD Board, the CPD devoted great care and attention to its adoption and application of nonpartisan candidate selection criteria. The CPD sponsors debates because it believes the voters should have the opportunity to view the leading candidates, regardless of the party affiliation or lack thereof, debate in the final weeks of a very long campaign. It has consistently approached candidate selection with this voter education goal in mind.

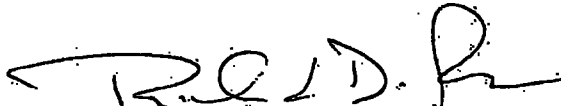
3. Contrary to what I understand the complainants have claimed, the CPD's candidate selection criteria have not been adopted or applied with any partisan purpose. They have not been adopted or applied with the intent to keep any party or candidate from participating in the CPD's debates or to bring about a predetermined result. Rather, the Criteria were adopted and applied to further the legitimate voter education purposes for which CPD sponsors debates.

4. It has long been my view that the CPD's debates should include any independent or non-major party candidate if that candidate is properly considered a leading

candidate based on his or her public support. I have not supported including candidates who enjoy only very modest levels of public support. The CPD's candidate selection criteria are designed to identify the leading candidates.

5. I have never observed any Board member ever approach any issue concerning the CPD or its mission from a partisan perspective and the CPD has conducted its business in a strictly nonpartisan fashion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 17, 2017.


Richard D. Parsons

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates

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MUR 6869R & 6942R

DECLARATION OF ALAN K. SIMPSON

I, Alan K. Simpson, give this declaration based on personal knowledge.

1. I served as a member of the Board of Directors of the non-profit, nonpartisan Commission on Presidential Debates (the "CPD") at various times between 2002 and 2015. I did not serve continuously through that period. This declaration addresses the time periods when I served on the Board.

2. Each election cycle in which I was on the CPD Board, the CPD devoted great care and attention to its adoption and application of nonpartisan candidate selection criteria. The CPD sponsors debates because it believes the voters should have the opportunity to view the leading candidates, regardless of the party affiliation or lack thereof, debate in the final weeks of a very long campaign. It has consistently approached candidate selection with this voter education goal in mind.

3. Contrary to what I understand the complainants have claimed, the CPD's candidate selection criteria have not been adopted or applied with any partisan purpose. They have not been adopted or applied with the intent to keep any party or candidate from participating in the CPD's debates or to bring about a predetermined result. Rather, the Criteria were adopted and applied to further the legitimate voter education purposes for which CPD sponsors debates.

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4. It has long been my view that the CPD's debates should include any independent or non-major party candidate if that candidate is properly considered a leading candidate based on his or her public support. I have not supported including candidates who enjoy only very modest levels of public support. The CPD's candidate selection criteria are designed to identify the leading candidates.

5. I have never observed any Board member ever approach any issue concerning the CPD or its mission from a partisan perspective and the CPD has conducted its business in a strictly nonpartisan fashion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 17, 2017.


Alan K. Simpson